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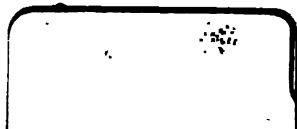
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THE  
**LAW JOURNAL REPORTS**

FOR  
THE YEAR 1880.

CASES RELATING TO  
THE POOR LAW, THE CRIMINAL LAW,  
AND OTHER SUBJECTS

CHIEFLY CONNECTED WITH

**The Duties and Office of Magistrates,**

PRINCIPALLY DECIDED IN THE  
QUEEN'S BENCH, COMMON PLEAS, AND EXCHEQUER DIVISIONS,

AND IN THE

COURT FOR CROWN CASES RESERVED,  
MICHAELMAS SITTINGS, 1879, TO TRINITY SITTINGS, 1880,  
BOTH INCLUSIVE.

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REPORTED

*In the Court for Crown Cases Reserved,*  
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# SUPREME COURT OF JUDICATURE.

## CASES RELATING TO THE POOR LAW, THE CRIMINAL LAW, AND OTHER SUBJECTS

CHIEFLY CONNECTED WITH

### The Duties and Office of Magistrates.

LAW JOURNAL REPORTS, VOL. XLIX.

MICHAELMAS, 1879, to MICHAELMAS, 1880.

43 *Victorie.*

[IN THE QUEEN'S BENCH DIVISION.]

1879. } THE QUEEN v. SIR ROBERT  
Nov. 19, 20. } CARDEN.

*Defamatory Libel—Jurisdiction of Magistrate on Criminal Charge of Libel—Evidence of Truth of Libel, when admissible—6 & 7 Vict. c. 96 (Lord Campbell's Act), ss. 5 & 6—30 & 31 Vict. c. 35. s. 3.*

*On the hearing before a magistrate of an information under section 5 of Lord Campbell's Act (6 & 7 Vict. c. 96), for maliciously publishing a defamatory libel, the magistrate has no jurisdiction to receive evidence, whether on cross-examination of the complainant's witnesses or on the direct testimony of witnesses called by the accused, to prove the truth of the libellous matter charged, on the ground that the truth is not in issue before him, and cannot at that stage constitute any defence.*

This was an application for a mandamus to Sir Robert Carden, an alderman and magistrate of the city of London, in a case pending before him of a charge brought by Edward Levy Lawson against Henry Labouchere and Charles Wyman for publishing a defamatory libel, commanding him to hear evidence in cross-examination by the defendants of the

complainant and the complainant's witnesses, and direct evidence of the defendants and their witnesses on the information of the complainant against Henry Labouchere, the defendant, for a libel referring to the said Edward Levy Lawson, to prove, first, that the alleged libel was not a false and defamatory libel; second, that it was a free and fair comment on a public man in a matter to which he had given prominence and called public attention, and which was a question of public interest; third, that the alleged libel was true in substance and in fact; fourth, that it was for the public benefit that the alleged libel should be published; and fifth, that it was not published knowing it to be false; and commanding the said magistrate further to hear all evidence relating to the same libel and to the circumstances under which the same was published, and to the conduct of the complainant in reference thereto, with a view to the exercise of the discretion of the said alderman as to whether he should or should not commit the defendants for trial; and commanding him further to hear all evidence on cross-examination of the complainant and his witnesses going to the credit of the said witnesses;

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and to bind over the witnesses to appear at the trial.

The information against the defendants was under section 5 of Lord Campbell's Act (6 & 7 Vict. c. 96), of publishing a false and defamatory libel only, and there was no charge under section 4 of having published it knowing it to be false. The libel in great measure had reference to the conduct of the complainant as proprietor of the *Daily Telegraph* newspaper.

From the affidavits it appeared that the question raised before the magistrate arose upon the contention of the defendants that they had a right to prove that the libel was true in substance and in fact, and that it was for the benefit of the public that it should be published. The magistrate, on the authority of *The Queen v. Townshend* (1), declined to permit the defendants to continue their cross-examination or to call witnesses to establish either of those points.

A rule *nisi* for the mandamus having been granted on November 4th by Field, J., and Manisty, J.,

*Sir John Holker (Attorney-General), Sir H. S. Giffard (Solicitor-General), Serjeant Ballantine and Poland* now shewed cause for the prosecutor.—The question is really whether a defendant is at liberty, when charged with publishing a defamatory libel, to prove before the magistrate that it is true and for the benefit of the public. It was argued that he has this right by virtue of section 3 of 30 & 31 Vict. c. 35. But that Act did not make any change in the class of evidence to be received, it only provided for the binding over of any witnesses which an accused person might have; the inquiry must still be into relevant matter. Now in *The Queen v. Townshend* (1) it was decided that evidence of the truth of a libel was irrelevant on the hearing of a criminal charge before a magistrate; and it is an error to say that that case was overruled in *Ex parte Ellissen* (2). The latter case was a charge under section 4 of Lord Camp-

bell's Act, where the charge in the information was of publishing a libel knowing it to be false. So that there the truth was material to the charge; but under section 5 no question of truth arises until the defendant is in a position to take advantage of the statute (3). Now before Lord Campbell's Act a man was not allowed at his trial to prove the truth of the libel; but it was thought then that, under certain safeguards, he might be allowed to do so. Lord Campbell's judgment in *The Queen v. Newman* (4) shews what was the intention of the Act. This gave no general right to raise the defence before the magistrate, for it was not constituted a defence before him on the preliminary inquiry, and he has no jurisdiction to pronounce upon it.

(3) 6 & 7 Vict. c. 96. s. 4. "And be it enacted that if any person shall maliciously publish any defamatory libel knowing the same to be false, every such person being convicted thereof shall be liable to be imprisoned for any term not exceeding two years, and to pay such fine as the Court shall award."

Section 5. "And be it enacted that if any person shall maliciously publish any defamatory libel, every such person being convicted thereof shall be liable to fine or imprisonment or both, as the Court may award; such imprisonment not to exceed the term of one year."

Section 6. "And be it enacted that on the trial of any indictment or information for a defamatory libel, the defendant having pleaded such plea as hereinafter mentioned, the truth of the matter charged may be inquired into, but shall not amount to a defence, unless it was for the public benefit that the said matters charged should be published; and that to entitle the defendant to give evidence of the truth of such matters charged as a defence to such indictment or information it shall be necessary for the defendant, in pleading to the said indictment or information, to allege the truth of the said matters charged in the manner now required in pleading a justification to an action for defamation, and, further, to allege that it was for the public benefit that the said matters charged should be published, and the particular fact or facts by reason whereof it was for the public benefit that the said matters charged should be published, to which plea the prosecutor shall be at liberty to reply generally, denying the whole thereof . . . Provided always that the truth of the matters charged in the alleged libel complained of by such indictment or information shall in no case be inquired into without such plea of justification . . ."

(4) 1 E. & B. 268; 22 Law J. Rep. Q.B. 156.

(1) 4 F. & F. 1089; 10 Cox C.C. 356.

(2) Q.B. Mich. Term, 1868, not reported. Cf. *Starkie on Libel*, 4th edition, p. 502.

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The magistrate is directed by Jervis's Act (11 & 12 Vict. c. 42), and by Russell Gurney's Act (30 & 31 Vict. c. 35), what to do as to taking evidence. That evidence is to be material to the case, and that must mean material to the issue which he is trying, namely, whether a *prima facie* case is established. No question arises as to justification till after plea.

[LUSH, J.—Could a magistrate on a charge of murder hear evidence of insanity ?]

No, nor in mitigation of punishment, where the case was one with which he could not deal summarily. It is manifest how dangerous it would be to compel a magistrate to take evidence on which perjury could not be assigned.

[COCKBURN, C.J.—An accused person might occupy an indefinite time in cross-examination and in calling witnesses, and after all not raise the defence at the trial by pleading the necessary plea.]

And it is to be observed that there is no provision for evidence in rebuttal being given, as would have been the case had the statute intended to admit the evidence contended for.

Then, too, the magistrate could have no guide as to what was involved in the suggested defence, whereas at the trial the defendant is tied down by the plea which he is obliged to place upon the record.

[LUSH, J.—The plea must state the particular facts on which the defendant relies, and I can well conceive that a plea might be bad on demurrer for not stating facts which could in law be a justification.]

It is impossible to suppose that the limited and general provisions in Russell Gurney's Act can overrule the express provision in Lord Campbell's Act, under which alone the defence can be set up (5).

*J. E. Gorst (Lamley Smith with him), for Sir R. Carden.*

(5) 30 & 31 Vict. c. 35. s. 3. " . . . And if the accused person shall call or desire to call any witness or witnesses such justice or justices shall in the presence of such accused person take the statement on oath of those who shall be so called as witnesses by such accused person, and who shall know anything relating to the facts and circumstances of the case, or anything tending to prove the innocence of such accused person, and shall put the same into writing."

*O. Russell, Wildey Wright and Macdonnell*, in support of the rule.—The first proposition on the part of the defendants is, that the magistrate is compellable to hear evidence on cross-examination relating to the facts and circumstances of the case; and the second that he was bound by Russell Gurney's Act to hear and bind over all witnesses tendered by the defendants.

It does not affect the defendants' right that the cross-examination and evidence do also have a tendency to prove the truth of the allegation. He may prove the truth of his facts to shew that his comment based on them is a fair one.

The accused is entitled to have evidence for use at the trial, and it is a fallacy to say that because a magistrate has not power to decide he has not jurisdiction to hear. On a charge of murder it might be that provocation could be proved by one witness, and though his evidence could not prevent the magistrate from committing, yet the accused would be entitled to have the evidence given and recorded.

[LUSH, J.—That would be within the jurisdiction of the magistrate, because such evidence might lead to a committal for a minor offence, manslaughter.]

But it is contended that an accused is entitled to give in evidence facts which would go in mitigation generally.

Then before Lord Campbell's Act truth would have been a defence, though no doubt for many years immediately preceding the Act it was not admitted to be so. The last case was in 1720; and Lord Campbell's speech (66 *Hansard*, p. 200), in introducing his bill, shews that he recognised the fact.

It becomes important to trace the growth of the magistrate's power and jurisdiction in taking evidence. From 1 & 2 Ph. & M. c. 13, followed by 2 & 3 Ph. & M. c. 10, it appears that a magistrate had a right to go into the facts and circumstances of the case, and the Act 7 Geo. 4. c. 64. ss. 1, 2 and 3, implies that the accused can test the evidence by cross-examination generally, in felonies and misdemeanours, which the magistrate has no power to deal with finally.

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[COCKBURN, C.J.—That is entirely with a view to his saying whether the accused should be tried or not; the magistrate has nothing to do with deciding whether at the trial the accused shall be compelled to plead justification or not.]

Then by Jervis's Act (11 & 12 Vict. c. 42. s. 17) as a witness may be cross-examined to credit, the accused has a right to have everything taken down of "the facts and circumstances" of the case, not only, that must mean, those which tell against him, but all which would help the Court, which must ultimately decide, to come to their conclusion.

[COCKBURN, C.J.—We shall need authority for that proposition.]

The word material means that which tells on the question of the guilt or innocence of the accused or bears on the character of the offence. There is no limitation as to the questions to be put or evidence given, and Russell Gurney's Act is directly aimed at the perpetuation of testimony. The words "tending to prove the innocence" are wide enough to include evidence of truth, because it is impossible to say that that which eventually will, if established, prove his innocence, has not a tendency to prove it in the earlier stage.

Then the second point which rests wholly on the same Act is based on the intention of that Act to permit an accused person to call all his witnesses at the expense of the country by having them bound over by the magistrate. Section 3 (5) applies in express terms to all indictable offences, and that includes libel. It is, as the statute itself shews, not only evidence on which the magistrate would be able to determine whether to commit or not, but evidence after he shall have made up his mind to commit.

[COCKBURN, C.J.—As to relevancy I do not see any distinction between cross-examination and evidence adduced by the prisoners' witnesses.]

But it is admitted that evidence of truth will be relevant at the trial on plea pleaded, and why is not the defendant to have the advantage which the Act intends to give him, as to having his witnesses bound over to appear?

Anyhow, whether the alleged libel is a

fair comment on the acts of a public man is a relevant question, and would have been a defence before Lord Campbell's Act, although necessarily much of the same evidence would be given as in trying to prove the truth.

[COCKBURN, C.J.—You cannot make a fair comment on false facts: the question is, whether the alleged facts are true.]

Lastly, although the information is under section 5 of Lord Campbell's Act, yet, if the defendant be committed, the prosecutor will be able to indict him under section 4 for publishing the libel knowing it to be false. Thus putting in issue the very point which it is said is not now raised against him.

COCKBURN, C.J.—This, no doubt, is a case of considerable importance, but it is to my mind so clear that I think we ought not to hesitate a moment in at once discharging this rule. Indeed, the application, under the circumstances, for a mandamus, is of a somewhat startling nature. We have undoubtedly jurisdiction where a magistrate, having authority to hear and determine, declines to exercise the jurisdiction he possesses, and thereby interrupts or frustrates justice, by the exercise of our mandatory authority to direct him to hear and determine. But this is an occasion where while a case is in course of hearing, we are asked to interfere and to direct a magistrate as to the course he shall pursue. Now, while we have authority to issue a mandamus to hear and determine, we have no authority to control the magistrate in the conduct of the case, or to prescribe to him the evidence which he shall either receive or reject, as the case may be; therefore, to my mind, it is an anomalous proceeding to call upon us to issue a mandamus while the case is still under discussion. We are not called upon to exercise our appellate jurisdiction. That could only properly be done when the case is at an end, and where such case is subject to our appellate jurisdiction. But we are not now exercising any such jurisdiction. We are called upon to issue a mandamus commanding a magistrate to do a certain thing. There is, no doubt, a precedent

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in the case of *Ex parte Ellissen* (2) for saying that where a magistrate declines to exercise the jurisdiction which he possesses, and thereby obstructs the proper course of justice, this Court may interfere on the ground that he has not heard and determined in the full sense of the term. For my own part, I must say I think in the case that has been referred to here we went to the utmost limits of our mandatory jurisdiction, and I, for one, should be unwilling to extend the principle of that case to any set of circumstances which did not clearly fall within it. But it is said that in this case the magistrate has declined jurisdiction. That is a question which, of course, involves the point whether he had jurisdiction to receive this evidence, and, in my firm and unshaken opinion, he had not. Let us see, first, what is the duty and province of a magistrate when a party is brought before him for the purpose of being committed or held to bail upon a particular charge. The duty of the magistrate is simply to determine upon hearing the evidence for the prosecution, and evidence if it is adduced on the part of the defence, whether there is a case on which the accused ought to be sent for trial. It is no part of his duty or his province to try the case. In considering the guilt or innocence of the accused he has only to see whether there is a fitting case upon which to put the accused upon his trial. That being the issue before him, unless some statutory duty is imposed upon the magistrate, the evidence before him must be confined to that which is alone the question before him. If he exceeds the limits of that inquiry, in my opinion he transgresses the bounds of his duty. Now, in this case the charge is one of libel, and what was it the duty of the magistrate to enquire into? First, to see whether the written matter which was charged to be libellous was on the face of it a libel. Secondly, to see whether the charge of publication was brought home to the accused, or, at all events, so far brought home that he ought to be put upon his trial. It is said that the magistrate has to do more, that it was incumbent upon him to receive evidence to shew the truth of that which, unless the truth were

shewn, was undoubtedly libellous. I meet that proposition with an unhesitating negative. By the common law of England, as settled prior to Lord Campbell's Act, and as it still remains settled independently of that Act, truth, whatever may have been the state of things in ancient times, was not a defence upon a criminal charge of libel. It therefore can only become a defence under the statute to which I have referred; and it can only be a defence under the statute when the statutory conditions have been complied with. A magistrate therefore can only take evidence of the truth of a libel when it is in issue before him under that statute; at common law he could not enter into any such enquiry. But then does Lord Campbell's Act, which introduced so great and important an alteration and innovation in our law in permitting truth to be a defence upon a criminal charge of libel, enable a magistrate to enter upon this new branch of enquiry in a case like the present? Certainly and surely not, because such a defence does not arise at that stage, and it cannot therefore be put forward and insisted upon before the magistrate. I tested that by this most pertinent question, which I put more than once, and to which I have received no satisfactory answer so far as this application is concerned. Suppose Mr. Labouchere had succeeded fully and entirely in shewing the truth of this libel, what would have been the duty of the magistrate? Notwithstanding the truth of the libel and the cogency of the evidence, the magistrate would have been compelled to commit or hold Mr. Labouchere to bail, because it was matter which could not be gone into or decided upon before him. You must first have commitment or holding to bail, next indictment, next pleas, and the pleas must be such as to satisfy the exigencies of the statute—and until you have those pleas upon the record which satisfy the exigencies of the statutory conditions there is no defence which can be raised on the ground of truth. How, then, can a magistrate enter upon an enquiry which is beyond his province and jurisdiction, when, even if the truth were established to the uttermost, he cannot hold his hand, but must commit the

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party, if there is a libel, and if the publication is sufficiently brought home. To my mind, therefore, it is abundantly clear that any enquiry into the truth of these libellous matters was beyond the province of the magistrate, and was wholly irrelevant to the only enquiry which it was competent to him to institute, namely, whether, independently of the statutory defence, which could only be raised at an ulterior stage of the proceedings, the case was sufficiently brought home to the accused to call for commitment or holding to bail. That is my view with regard to jurisdiction. In my opinion the jurisdiction of the magistrate is confined to the enquiry as to whether or not, upon a proper review of the whole evidence before him, for the defence as well as for the prosecution, he arrives at the conclusion that the case is one which he ought to send for trial, and a defence which cannot be raised till afterwards is beyond his jurisdiction to enquire into. Therefore, so far as the truth of the libel was concerned, Sir Robert Carden was quite right in what he did. But then it is said that, although the proof of the truth of the matters contained in this libel would not have been available so as to justify the magistrate in declining to commit the defendant, it might have been received with a view to its being available to him for a collateral purpose, namely, for perpetuating the testimony. Now, I look to the statute and I find no reference to the perpetuation of evidence as a reason why magistrates should receive it. I quite agree that, incidentally, the perpetuation of evidence is a very great advantage which arises from the procedure established by the statutes for the administration of criminal justice in the matter of magisterial enquiries. Indeed, several important advantages result from the system of procedure which has been thus established by statute. First, those who have to frame indictments have before them the evidence contained in the depositions, and are able to frame the indictments in accordance with the precise facts of the case. Then, again, the Judge has the advantage before proceeding to hear the evidence on the trial of making himself more or less familiar

with the "facts and circumstances" of the case. Then there is the great advantage that if there is any material discrepancy between the statements of a witness on the trial and those made before the magistrate, that discrepancy may be pointed out, and the evidence of the witness established or materially shaken, as it ought to be, in such an event. And, lastly, there is the very important advantage that if a witness who has given his evidence before the magistrate dies or is too ill to attend, you have his testimony in a form in which it can be used. But although there are these advantages incidental to this system of procedure, I find nothing in the statute which warrants the conclusion that, because of these advantages, the magistrate can exceed the limits and bounds of his proper jurisdiction, and enter into an enquiry which is *ultra* and foreign to the question whether he shall commit or hold to bail merely to perpetuate such testimony. I see nothing in the circumstances which warrant any such presumption that that was the statutory intention, and still less any language which indicates that that was the intention of the Legislature. Then it is said, lastly, "But this evidence was receivable because it was commenting on the conduct of a public man." Now I really think the fallacy of such an argument is so transparent that it is hardly worth while to occupy a minute of time in exposing its wrongfulness. It is true that if you comment upon given facts which are not in themselves libellous, though your comment be apparently libellous and unjust, it may acquire the character of privilege, because the man of whom you are speaking is a public man. I will illustrate that in this way. Suppose a writer were to state a series of facts—true in themselves, at all events not libellous—of a public man standing before a constituency for election, and to say, "This man is a dishonest politician; he is not a man fit to be trusted with the confidence of the constituency." Well, the comment in itself might be unjust and a libellous comment; but the facts upon which it was founded not being themselves libellous, he would be entitled to say, "Because the individual has put him-

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self forward in a public capacity I am entitled to make comments upon him, which comments are privileged, so long as they are not malicious." But take the converse of the proposition. To say that you may first libel a man and then comment upon the libel is, to my mind, to enunciate that which is so transparent an absurdity that every one must see that it is not worthy of argument. If you say a man is a murderer, and has committed every crime on the face of the earth, and then say, "And therefore I say he is so and so and so and so," you cannot, by calling him a public man, justify comments or justify facts. Now here the fallacy which underlies the whole argument is that there are facts which are stated independently of the comments. It is said that Mr. Lawson is so and so and so and so, and, therefore, he is a disgrace to journalism. Well, it may be that you may speak of a public man as a disgrace to journalism, possibly—I am not expressing any opinion about that as matter of comment—but if you choose to justify a general and sweeping accusation that he is a disgrace to journalism by stating a series of facts, every one of which is in itself libellous, you cannot justify the statement of the libellous facts on the ground that they are comments on a public man. Facts are one thing and comments are another. If your facts are not injurious, and you can shew them to be true, it is possible that your comments, if made upon the conduct of a public man, may escape the consequences of libel by reason of the privilege which would attach to them. But your facts must be in themselves not libellous. The statements must be either not libellous, or you must be in a position to prove the facts. But here the facts stated are clearly and unmistakably libellous, unless the truth can be proved. But then the difficulty of proving truth is this—that you cannot prove the truth of that which is libellous until a stage of the proceeding altogether ulterior to the magistrate's jurisdiction, and, therefore, from whatever point of view I look at them, the arguments in this case entirely fail, and we can only arrive at one conclusion, that this defence was not evidence before the magistrate. We may

bear in mind that there is only one ground on which it can be put that the reception of this evidence is urgent at this stage, and that is that the witnesses may die or fall ill whom the accused wishes to call or to cross-examine, but the danger is so remote that we could not be justified in extending the provisions of the statute merely to meet it. Just let me put this case by way of illustration. Suppose, with reference to the duty which, it is contended, is imposed upon the magistrate by Russell Gurney's Act, that Mr. Labouchere, instead of offering this evidence to establish the truth of his statements, had said, "Well I shall not dispute upon the present occasion your duty to commit me or to hold me to bail. This is not the stage at which I shall ask you to receive evidence to prove the truth of the assertions I have made; but I will ask it of you for a collateral purpose. I desire to put it on record in order to perpetuate testimony that I published this libel under circumstances of the greatest possible provocation." Would that have been admissible? Would it have been within the province and duty of the magistrate to receive it? I say emphatically no. It was not within his province, because it had nothing on earth to do with the question whether Mr. Labouchere should be committed or not. That test appears to me to be a complete answer to the able argument by Mr. Russell that Russell Gurney's Act was intended to enable a defendant to obtain evidence and perpetuate evidence by calling witnesses before the magistrate with the view of establishing anything which at any time throughout the whole course of the enquiry, not only before the magistrate, but afterwards on the trial, could possibly have any relevancy or be material to the defence. It is clear that the magistrate could not, for a mere collateral purpose ulterior to the exercise of his jurisdiction, take upon himself to receive evidence which did not go to the only issue before him—namely, whether the case was one which ought to be sent for trial. On these grounds I am clearly of opinion that the rule must be discharged.

LUSH, J.—The argument urged before us in this case raises two questions, which

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I think I ought to keep distinct, because they are distinct. The one is of a general character; the other has reference to this particular case. The first is of great and general importance, as affecting the jurisdiction and practice of magistrates in their investigation of criminal charges and their discretion in dealing with accused persons brought before them. The contention is that every person brought before a magistrate on a criminal charge has a right to require him to receive evidence which might be serviceable to him on his trial, in case he should be committed for trial, even though the evidence would have no tendency to prove or to disprove the guilt of the party so accused, and even if it only goes to mitigation of punishment. That was the general proposition contended for by Mr. Russell—that whatever evidence was proposed to be adduced, the magistrate was bound to receive it, even though his only duty was to determine whether a sufficient case had been established for committing the defendant for trial or holding him to bail. So far as I am aware, it is the first time such a proposition has been urged, and it is one for which I can find no authority, nor even any dictum giving it sanction. Mr. Russell based his argument upon particular phrases to be found in two Acts of Philip & Mary, in 7 Geo. 4, in Jervis's Act, and again in Mr. Russell Gurney's Act, and he endeavoured to support it by considerations of convenience, inconvenience and hardship in certain events, I may say that considerations of inconvenience occur to one on the other side, if such an argument is to prevail; but of course all such considerations can have no weight with the Court if they are inconsistent with the provisions of the statute. The phrase first occurs in the Act of Philip & Mary, which required that in the case of felony the justices shall take the examination of the prisoner and information of them that bring him in of the fact and circumstances thereof; and the same or as much thereof as shall be material to prove the felony shall be put in writing, before admitting him to bail. The magistrate is therefore to hear all the facts, so as to collect what is material from

them. Another Act of the same reign extended that provision to cases where the prisoner was committed and not bailed; and the Act 7 Geo. 4, using the same language, further extended them to misdemeanours. It became the duty of the magistrates under these statutes to record so much evidence as was material to prove the guilt of the party accused. Then came Jervis's Act, which by section 17 provided that the evidence of the fact and circumstances of the case so taken in writing—and it must be remembered that at that time what the justice had to put into writing was what was material to the issue before him—might be read at the trial in case of the death, absence or illness of the witness who gave it. Then came Mr. Russell Gurney's Act, which provides for the first time for taking the evidence on behalf of the prisoner, and upon this it was argued that its object was to perpetuate the evidence for the prisoner's benefit. But it appears to me that the 3rd section shews that it was intended to remedy a grievance of poor persons who had previously to go to the expense of subpoenaing their witnesses, in order to get them at the trial. Complaints had—the Act stated—been frequently made as to the injustice done to accused persons who, by reason of their poverty, were not able to summon witnesses on their trial; and it provided that they might be called before the magistrate, give their evidence, and be bound over to appear on the trial. They could, however, be examined or cross-examined only as to facts and circumstances material to the defence or tending to prove the innocence of the accused person. The statute excluded the taking of evidence as to character, and yet that may be very important, as also evidence in mitigation of punishment. If, as Mr. Russell says, a person accused may have witnesses to prove anything that might be serviceable at his trial, why does the provision exclude witnesses to character? The reason is, that they must be witnesses material to the case—of the prisoner that may be—or tending to prove his innocence. These two expressions are on purpose to point to the two kinds of defence that may be raised

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—one in reduction of the crime, the other in establishing innocence. A man might be charged with murder, and he was at liberty, if he could do so, to adduce evidence which would reduce the crime to manslaughter; or with robbery with violence, which by evidence he might reduce to the lesser offence; or with aggravated assault, which he might by evidence shew to have been a common assault. If a party were charged with having published a defamatory libel, well knowing it to be false, he might by evidence reduce the offence to the minor charge of having published a defamatory libel. All such evidence would be material to the case of the accused, though not proving his innocence. Those are the only statutes, and there is nothing in the later ones to widen the field of enquiry. Evidence is to be received on the one hand to prove the guilt, on the other to prove the innocence or rebut the presumption of the guilt of the accused.

Then as to the alleged object of the statutes being to perpetuate testimony, that point has been fully dealt with by the Lord Chief Justice. Perhaps at common law the deposition of a witness who had died might have been admitted at the trial; but it is to be observed that now the provision for the reading of the deposition is of a very limited character, for if a witness runs away his deposition cannot be read. One object of having the deposition was for the information of the prisoner himself, and another for the information of the Judge who might try him; but whatever be the various objects the language of the Act excludes all evidence not material to the case or tending to prove the prisoner's guilt or innocence.

Then, as to the particular proposition, it was urged that the magistrate had wrongly refused to receive evidence as to the truth of the alleged libel; and in comparing the affidavits made by Mr. Labouchere and Sir Robert Carden, I cannot doubt that that involves the question which the parties came before us to have decided. I therefore come to the question whether, on a charge of publishing a malicious libel, it is com-

petent to prove more than publication, and that the party making the charge is the person referred to in the alleged libel. Now, it is perfectly clear that up to the time of the passing of Lord Campbell's Act the truth of a libel was no defence at all. That Act made an alteration in the law, and under certain conditions it enabled a person charged with publishing a defamatory libel to rely for his defence on the truth of the libel. But it expressly provided that the question of the truth of the libel should be raised by plea, and the plea can only be had recourse to after committal. It has been said—and it is unfortunately true—that if the defendant here should be committed for trial or held to bail, he may, though charged under the 5th section of Lord Campbell's Act, be indicted under the 4th section. I hope the law will be altered in that respect; but the question we have to decide is what is the law now as to the taking of evidence on the preliminary enquiry on a charge founded on the 5th section of the Act. If the defendant had been charged with having published a defamatory libel, well knowing it to be false, he would be entitled to adduce evidence to shew that he had no such knowledge, and thus indirectly of proving the truth of the libel; but on a charge of publishing a defamatory libel, justification as to the truth of the libel can only be grounded upon a plea, and it is optional to a defendant when he comes to take his trial so to defend himself or not; but if he does, he must not only state that the publication of the alleged libel was for the public benefit, but the facts on which he relies to bear out that assertion. The case of *Ex parte Ellissen* (2) has been relied on as overruling that of *The Queen v. Townshend* (1), but I think it is to be regretted that the learned editor of the book in which it is so stated had not made enquiry at the Crown Office, for he would then have seen that the two cases had been similarly decided, and persons would not have been misled by supposing that the one had overruled the other. In my opinion those two cases were perfectly well decided, and, therefore, that in this case the rule

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for a mandamus ought to be discharged with costs to both parties.

MANISTY, J.—As I took part in granting this rule I think it right to say that it was not owing to any doubt entertained either by my learned brother, Mr. Justice Field, or myself, as to the law of the case that we granted the rule. We entertained no doubt; but, having regard to that which is now admitted on all hands to be the fact—namely, the importance of the case—we thought it better, more expedient, that a rule *nisi* should be granted, in order that the matter should undergo such discussion as it has undergone—full, exhaustive, and elaborate as it has been—and be solemnly decided in order that there might be no doubt or difficulty in future. Having said so much, my observations on the case will be very short. Agreeing as I do with the exhaustive judgment of the Lord Chief Justice, supplemented in some very important points as regards the general administration of the law by Mr. Justice Lush—agreeing as I do with the principles they have enumerated and the conclusions at which they have arrived—I have little to add to what has been said. I have little to add because it seems to me quite sufficient to found my judgment on the statute itself—I mean Lord Campbell's Act. In that statute will be found, as I take it, the answer to this application. We need go no further. Now, it cannot be doubted that until the passing of Lord Campbell's Act the magistrates had no jurisdiction whatever to enter into the question of the truth or falsehood of a libel, and even under the 5th section of the Act charging simply a defamatory libel—the section under which these proceedings are brought—evidence as to the truth of a libel cannot be given before a magistrate. Therefore, it was decided—rightly decided, as it seems to me—in the case of *The Queen v. Townshend* (1), that if a magistrate, on the preliminary inquiry, went into evidence as to the truth of the libel, he went into evidence that was not relevant to the matter before him, and that the evidence so given could not be made the subject of an indictment for perjury at any stage of the case, either before or after the trial. The depositions would be

simply so much waste paper. Therefore, it seems to me that to compel a magistrate to take evidence irrelevant to the issue before him would be simply going through a mockery—a hollow mockery. But it is said that the evidence might be useful to the defendant afterwards at the trial, if only in mitigation of punishment. Well, that could not at any time have been held, and even affidavits as to the truth of a libel after trial or after conviction cannot be received. Indeed ever since the great case of *The King v. Sir Francis Burdett* (6) affidavits as to truth never have been received. They have always been rejected. It is only when a person charged with libel has complied with the 6th section of Lord Campbell's Act that the question can be gone into. It is now open to a person to plead the truth of the matter charged, but at the same time he must establish that it was for the benefit of the public that the matters so charged should be published; and it is only when that plea has been entered—guarded as it is—that the question can be gone into. It is, in fact, specially enacted that the matters charged shall not be enquired into without such plea. In this case the defendant has had no opportunity of legally entering such a plea—the enquiry has not yet arrived at the stage for it; and if the magistrate were to receive the evidence he would be going beyond the limits of his jurisdiction. In my opinion it is only necessary to refer to the common law, and to the provisions contained in the 6th section of Lord Campbell's Act, to find ground for discharging this rule upon the point of the reception of evidence as to the truth of the matter. And there I might well conclude what I have to say; because any one looking at the affidavits will see that that was the only question which the magistrate intended to be presented to the Court. Several other points, however, have been raised, on only one of which will I comment. It has been urged that the defendant was entitled to a mandamus on the ground that the evidence he desired to be received would tend to shew that the libel was a fair comment on the

(6) 4 B. & Ald. 95.

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public acts of a public man. Well, with regard to some of the passages of that libel—and only some have been mentioned—I should have thought that, after hearing them, it required some courage to say that any magistrate could be asked to receive evidence to lead him to the conclusion that that which the libel itself shews is not true was true—namely, that that libel, consisting as it does of what I venture to say may fairly be characterised as vulgar, coarse abuse and vituperation, and that of a very remarkable and extreme character, could for one moment by any sensible person be treated as fair comment upon the public conduct of a public man. And, if the question was before us whether a mandamus should issue to compel the magistrate to receive evidence to contradict that which on the face of the libel itself is manifest and transparent, if we granted such an application we should be simply ordering him to do that which is revolting to common sense, and which, it seems to me, would bring scandal upon that high prerogative writ of mandamus—that we should really be offering, in the name of the Queen, an insult to the understanding and the common sense of the magistrate to whom it was directed. Therefore, it seems to me to be only necessary to look at the libel itself to say that this Court could never entertain the suggestion of issuing a mandamus compelling the magistrate to receive evidence that the matter charged in this case constituted a fair comment on the public acts of a public man.

*Rule discharged.*

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Solicitors—A. T. Cox, for complainant; T. J. Nelson, the City Solicitor, for Sir R. Carden; H. Kimber & Co., for defendants.

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[CROWN CASE RESERVED.]

1879. }  
Dec. 6. }

THE QUEEN v. MARTIN.\*

*Forgery—Fictitious Christian Name.*

*The prisoner in payment for a pony and cart purchased by him from the prosecutor, drew a cheque, in the presence of the prosecutor, upon a bank in which he, the prisoner, had no account, in the name of William Martin, his real name being Robert Martin, and gave it to the prosecutor as his, the prisoner's, own cheque drawn in his own name. The prosecutor received it in the belief that it was drawn in the prisoner's own name:—*

*Held, that as the prisoner gave the cheque entirely as his own, his subscribing it by a fictitious name did not make it a forgery, the credit having been wholly given to himself, without any regard to the name, or any relation to a third person.*

*Dunn's Case (1 L. C. C. 59) followed.*

CASE reserved by Cockburn, C.J.

The prisoner Robert Martin was tried on an indictment which charged him in one count with having forged, and in another with having uttered, a forged order for the sum of 32*l.* with intent to defraud. The facts were as follows:—

The prosecutor George Lee is a horse-dealer at Ashford in Kent. The prisoner Martin had been for many years collector of the tolls of the markets of Ashford and Maidstone, and was well known to the prosecutor. In the course of the present year, the prisoner, having ceased to hold the above-mentioned offices, left the neighbourhood and went to reside in Southwark. On the 2nd of September, being again at Ashford, for what purpose did not appear, he saw the prosecutor Lee in the street in a pony-cart, and accosted him, enquiring if he (Lee) had a pony for sale, whereupon the prosecutor recommended him to buy the pony he was then driving. A deal ensued, the result of which was that the prosecutor agreed to sell, and the prisoner to buy, the pony and carriage for 32*l.*

The prisoner proposing to give his cheque for the amount, both parties went

\* *Coram* Cockburn, C.J.; Lush, J.; Huddleston, J.; Lindley, J.; and Hawkins, J.

*The Queen v. Martin, C.C.R.*

into an adjoining inn in order that the cheque might be there drawn. The prisoner then produced a printed form of cheque of the bank of Messrs. Wigan & Co., bankers of Maidstone, taken from a cheque-book of which he had become possessed as a former customer of the bank. This he filled up in the presence of the prosecutor, with the name of the latter as payee, signed it in the name of William Martin, his name being Robert, and delivered it to the prosecutor, who put it in his pocket without further looking at it or observing in what name it was signed, after which he proceeded to give possession of the pony and carriage to the prisoner. On the ensuing morning the prisoner drove the pony and carriage to town, and on the day after drove to Barnet Fair, where he sold both. On the cheque being presented at Messrs. Wigan's bank, payment was refused on the ground that the signature was not that of any customer of the bank.

The prisoner had been a customer of the bank, and had had an account there in his proper name of Robert Martin; but his account remaining overdrawn for some time after he had ceased to be the collector of the market tolls, and the bank insisting on the balance due to them being paid, the amount was accordingly paid on the 4th of June, and the account was then closed. No money was afterwards paid in to the prisoner's credit, nor was any cheque drawn by him. He asserted, indeed, in his defence on this charge that he had expected money to have been paid in to his account, but no evidence was adduced to shew that there was any foundation for this statement. No name was mentioned of any person owing him money or by whom he expected money to be paid into the bank on his account. He had ceased to all intents and purposes to be a customer of the bank, and must have been fully aware that a cheque drawn by him on the bank would certainly be dishonoured.

Under these circumstances there can be no doubt that the prisoner had been guilty of the offence of obtaining the prosecutor's goods by false pretences. But the indictment being for forgery of

the cheque, and it appearing to me doubtful whether the charge of forgery could upon the facts proved be upheld, I reserved the case for the consideration of the Court.

In considering this question I have further to call attention to the following facts :—

The prisoner in drawing this cheque and delivering it to the prosecutor, did not do so in the name of, or as representing, any other person, real or fictitious. The cheque was drawn and uttered as his own, and it was so received by the prosecutor, to whom the prisoner was perfectly well known as an acquaintance of twenty years' standing, and by whom he was seen to sign it. The prisoner did not obtain credit with the prosecutor by substituting the Christian name of William for that of Robert. He would equally have got credit had he signed his proper name of Robert. The credit was given to the prisoner himself, not to the name in which the cheque was signed; the cheque was taken as that of the individual person who had just been seen to sign it, not as the cheque of William Martin as distinguished from Robert Martin, or of any other person than the prisoner. On the contrary, if the prosecutor, who knew the prisoner's name to be Robert, had observed that the signature was in the name of William, he would in all probability have suspected something wrong, and would have refused to take the cheque.

There was nothing whatever from which the motive of the prisoner in signing a wrong Christian name could be gathered. There happened, indeed, to be a William Martin a customer of the bank, but this was unknown to the prisoner; besides which, as the prisoner was perfectly aware that his person and true name were well known to the prosecutor, it could not be supposed that he intended to pass himself off as, or the cheque as the cheque of, any William Martin other than himself. The only motive which has occurred to my mind as one which might have induced him to sign a false Christian name is, that he may have thought that by so doing he might avoid being liable on the cheque

*The Queen v. Martin, C.C.R.*

when payment had been, as it was certain to be, refused. This, however, amounts to no more than conjecture. Be it as it may, and whatever may have been the motive, it occurred to me that while there had been a fictitious signature to the cheque in question, so far as the Christian name was concerned, yet the signature having been affixed by the prisoner, and the cheque delivered by him as his own, though there had been a signature in a fictitious name, the name could not be said to be that of a fictitious person, and that in this respect the case did not fall within the principle of the cases in which it has been held that the use of the pretended name of a fictitious person amounts to forgery. I have, therefore, sought the assistance of the Court as to whether, under the circumstances, the affixing a fictitious Christian name to this cheque by the prisoner amounts to forgery as charged in the indictment.

No counsel appeared to argue the case.

HAWKINS, J., referred to *Dunn's Case* (1).

COCKBURN, C.J.—This case is concluded by authority, independently of which I entertain no doubt. In *Dunn's Case* (1) it was resolved by the Judges that "in all forgeries the instrument supposed to be forged must be a false instrument in itself; and that if a person give a note entirely as his own, his subscribing it by a fictitious name will not make it a forgery, the credit there being wholly given to himself, without any regard to the name, or any relation to a third person." The conviction must therefore be quashed.

The other Judges concurred.

*Conviction quashed.*

[CROWN CASE RESERVED.]

1879. }  
Nov. 22. } THE QUEEN v. WILSON.\*

*Debtors Act*, 1869 (32 & 33 Vict. c. 62. s. 12)—*Adjudication of Bankruptcy—Infant—Trade Debts—Infants Relief Act*, 1874 (37 & 38 Vict. c. 62, s. 1).

The prisoner was convicted under section 12 of the *Debtors Act*, 1869 (32 & 33 Vict. c. 62), for that he, within four months before the presentation of a bankruptcy petition against him, upon which he was adjudged bankrupt, quitted England, taking with him property to the amount of 20*l.* which ought by law to have been divided amongst his creditors. The prisoner, who traded in Hull, left England with a sum of money exceeding 20*l.*, and was during his absence adjudged bankrupt. At the time he was so adjudged he was, as also at the present time, a minor. The debts proved against his estate in the bankruptcy were trade debts, and it did not appear that any debts for necessities supplied to him existed:—

Held, that the conviction could not be upheld, because the prisoner had no creditors amongst whom the said sum of money ought by law to have been divided, the trade contracts being, by the *Infants Relief Act*, 1874 (37 & 38 Vict. c. 62. s. 1), void (1).

CASE reserved by the Recorder of Hull.

The prisoner was tried on an indictment under the 12th section of the *Debtors Act*, 1869 (2), charging him

\* *Coram* Cockburn, C.J.; Huddleston, B.; Lindley, J.; Manisty, J.; and Hawkins, J.

(1) See further *Ex parte Kibble*, 44 Law J. Rep. Bankr. 63; Law Rep. 10 Ch. App. 373; and *Re Lynch*, 46 Law J. Rep. Bankr. 48; Law Rep. 2 Ch. D. 227.

(2) 32 & 33 Vict. c. 62. s. 12: "If any person who is adjudged a bankrupt, or has his affairs liquidated by arrangement, after the presentation of a bankruptcy petition against him or the commencement of the liquidation, or within four months before such presentation or commencement, quits England, and takes with him . . . any part of his property to the amount of 20*l.* or upwards, which ought by law to be divided amongst his creditors, he shall (unless the jury is satisfied that he had no intent to defraud) be guilty of felony."

*The Queen v. Wilson, C.C.R.*

with having feloniously, within four months before the presentation of a bankruptcy petition against him, quitted England, and taken with him his money, to the amount of 20*l.* and upwards, which ought by law to have been divided amongst his creditors, with intent to defraud. The prisoner traded in Hull as a Baltic merchant. On the 19th of October, 1878, he drew out of his bankers' hands at Hull the sum of 128*l.* in cash, and on the 27th of the same month quitted England for Sydney, and arrived at the latter place on the 2nd of February, 1879.

On the 30th of November, 1878, within four months of the prisoner having quitted England as aforesaid, a petition in bankruptcy was presented in the local Court of Bankruptcy at Hull against him, and he was on the same day adjudicated a bankrupt. At the time the prisoner was so adjudicated a bankrupt he was on the high seas on his way to Sydney. On the 3rd of February, 1879, the prisoner was apprehended at Sydney, and charged with this offence, and he then gave up to the officer apprehending him the sum of 96*l.* in gold and notes, and confessed to him that it was part of the money he had taken with him when he quitted England.

The debts proved against the estate were all trade debts, and contracted by the prisoner in his trade as a Baltic merchant. No debts for necessities were proved against the estate, nor was it shewn that any debts for necessities existed. The file of the proceedings in the said Bankruptcy Court was put in evidence, and amongst them was the order of adjudication of the prisoner to be a bankrupt, dated the 30th of November, 1878.

On the prisoner's part it was proved before me that the prisoner was born on the 13th of March, 1859. He was consequently a minor at the time of the aforesaid adjudication of bankruptcy, and at the time when he contracted the aforesaid debts which had been proved against his estate; and it was contended on his behalf that by reason of his infancy the said proceedings in bankruptcy were void; that he had not and could not have any creditors within the meaning of the 12th

section of the Debtors Act, 1869, amongst whom the property which he took away with him ought by law to be or to have been divided, inasmuch as since the Infants Relief Act, 1874 (3), contracts by infants, except for necessities, are void; and that the prisoner was never liable at law or in equity for the said debts contracted during his infancy, and could not have creditors in respect of them.

The jury convicted the prisoner, and the question reserved for the Court was whether, under the circumstances stated, the prisoner ought to have been convicted.

*Cyril Dodd*, who appeared for the prisoner, was stopped by the Court.

*Gorst* (*The Attorney-General, Sir John Holker*, with him), for the prosecution, admitted that the conviction could not be sustained, because the prisoner had no creditors amongst whom the said sum of money ought by law to have been divided, the trade contracts being by the Infants Relief Act, 1874 (3), void.

COCKBURN, C.J.—We are all agreed that this conviction cannot be sustained.

*Conviction quashed.*

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Solicitors—The Solicitor to the Treasury, for the prosecution; E. Laverack, Hull, for the prisoner.

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(3) 37 & 38 Vict. c. 62. s. 1: "All contracts, whether by specialty or by simple contract, henceforth entered into by infants for the repayment of money lent or to be lent, or for goods supplied or to be supplied (other than contracts for necessities), and all accounts stated with infants shall be absolutely void: Provided always, that this enactment shall not invalidate any contract into which an infant may, by any existing or future statute, or by the rules of common law or equity, enter, except such as now by law are voidable."

[IN THE QUEEN'S BENCH DIVISION.]

1879. } DANBY (*appellant*) v. HUNTER  
Nov. 28. } (*respondent*).

*Highways—Name of Owner of Cart, when to be painted on it—Highway Act, 1835 (5 & 6 Will. 4. c. 50), s. 76—“Cart”—Customs and Inland Revenue Duties Act, 1869 (32 & 33 Vict. c. 14), ss. 18 and 19.*

*A light spring cart used by the maker of agricultural implements for conveying them to market as well as for driving himself and family from place to place, and on which he paid a tax under 32 & 33 Vict. c. 14. s. 18, is not a “cart” within the meaning of section 76 of the General Highway Act, 1835 (5 & 6 Will. 4. c. 50), so as to make it necessary for the owner's name to be painted thereon.*

CASE stated by justices under 20 & 21 Vict. c. 43.

At the Petty Sessions holden at the justice room in the parish of Wrawby, in and for the division of Brigg, in the parts of Lindsey, on the 3rd day of June, 1879, an information and complaint preferred by Thomas Danby (hereinafter called the appellant) against George Hunter (hereinafter called the respondent) under section 76 of the Act, 5 & 6 Will. 4. cap. 50 (1), charging for that

(1) 5 & 6 Will. 4. c. 50. s. 76 :—“And be it further enacted that the owner of every waggon, cart or other such carriage, shall paint or cause to be painted in one or more straight line or lines upon some conspicuous part of the right or off-side of his waggon, cart or other such carriage, or upon the off-side shafts thereof, before the same shall be used on any highway, his Christian name and surname, or the style and title by which he is commonly designated, and the place of his trade or abode, or the Christian and surname and place of trade or abode of a partner or owner thereof at full length in large legible letters in white upon black or black upon white, not less than one inch in height, and continue the same thereupon so long as such waggon, cart or other such carriage shall be used upon any highway; and every owner of any waggon, cart or other such carriage who shall use or allow the same to be used on any highway without the name and

he, the respondent, on the 1st day of May last, at the parish of Wrawby in the parts aforesaid, then being the owner of a certain cart, unlawfully did use the same on a certain highway there situate called Wrawby Street without having then and there, and before the same was so used, his name printed thereon as required by the statute in that behalf, was heard and determined by us, and upon such hearing we dismissed the said information and complaint.

Upon the hearing of the said information and complaint it was proved on the part of the appellant and found as a fact that the respondent was the owner of a cart, and did use the same on the highway, in question without having his name painted thereon, but on the part of the respondent it was contended that the cart which he so used was not such a “cart or other carriage” as was contemplated by the statutes. It was proved by the respondent and admitted that the cart was a light spring cart used by the respondent in his trade as an agricultural implement maker, and for which he paid the annual duty of 15s. imposed by the statute of 32 & 33 Vict. c. 14, s. 18 (2),

description painted thereon as aforesaid, or who shall suffer the same to become illegible, or who shall paint or cause to be painted any false or fictitious name or place of trade or abode on such waggon or cart or other such carriage, shall forfeit and pay on conviction for every such offence a sum not exceeding 40s. with or without costs as the justices before whom such conviction shall take place shall think fit.”

(2) The Customs and Inland Revenue Duties Act, 1869, 32 & 33 Vict. c. 14.

By section 18, a duty is imposed on “every carriage.”

By section 19, sub-sect. 6: “The term ‘carriage’ means and includes any vehicle drawn by a horse or mule, or horses or mules, except a waggon, cart or other vehicle used solely for the conveyance of any goods or burden in the course of trade or husbandry, and whereon the Christian name and surname and place of abode or place of business of the owner, or the name or style and principal or only place of business of the company or firm owning the same, shall be visibly and legibly painted in letters of not less than one inch in length.”

*Danby v. Hunter, Q.B.*

on every carriage with less than four wheels. The respondent, it was admitted, used the said cart frequently for conveying agricultural implements to markets as well as for driving himself and his family from place to place. We, however, being of opinion that the cart in question being a light spring cart, for which the respondent took out an excise license, was not a cart within the meaning of the 76th section of the statute of 5 & 6 Will. 4. c. 50, dismissed the said information and complaint.

The question of law arising on the above statement for the opinion of this Court therefore is, whether the said cart used by the respondent as above-mentioned was such a cart as comes within the meaning of the section of the statute 5 & 6 Will. 4. c. 50, and whether the said dismissal is valid or otherwise, and the Court is humbly solicited, according to the power vested in the Court by the said statute 20 & 21 Vict. c. 43, to remit the case to us, the said justices, with the opinion of the Court thereon, or to make such other order as to the Court may seem fit.

*Lumley*, for the appellant.—The magistrates were misled by referring to the Assessed Tax Acts; it does not by any means follow that because duty is paid on a vehicle the owner is exempted from the provisions of the Highway Act as to having his name painted on it. The object of the latter was to enable the authorities at once to discover a person who might have subjected himself to penalties under the Act. The assessed taxes were imposed on luxuries, and vehicles used solely for business purposes were exempted, but the imposition of, or exemption from, duty, is quite independent of the express requirement in the Highway Act that the name shall be on every waggon, cart or other such carriage. This was a cart used in the way of business for carrying agricultural implements; and the justices cannot, by calling it a light spring cart, take it out of the statute.

No counsel appeared for the respondent.

*LUSH, J.*—I think that the justices were quite right. The question is, In what sense is the word "cart" used in the Highway Act? Now section 76 is as follows (1). [His Lordship read the section.] I think that this is a description of vehicles which carry heavy goods and go slowly along the road. It cannot, in my opinion, extend to gigs, dog-carts or gentlemen's carriages. I think also that the Inland Revenue Duties Act does throw some light upon the matter, especially when we remember that under the older Acts there were certain provisions in reference to what were called tax carts. There being in section 19 an exemption in favour of carts used solely for the conveyance of goods, we have it found in the present case that this was used for the conveyance of the respondent and his family from place to place, as well as for carrying agricultural implements. The latter must have been of small dimensions, as it is also found that this was a light spring cart, and, moreover, the tax was paid on it as a carriage. I do not see why any gig or dog-cart should not be within the Act if this is, but I am of opinion that it was not a cart or other such carriage within section 76.

*MANISTY, J.*—I also think that the justices were right. At any rate, I cannot see that they were wrong. The Assessed Taxes Act deals with carriages, not carts, and this vehicle paid tax under its provisions.

*Appeal dismissed.*

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Solicitors—Swann & Co., agents for Tweed, Stephen & Co., Lincoln, for appellant.

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[IN THE QUEEN'S BENCH DIVISION.]

1879. } HALL (appellant) v. HOPWOOD  
Dec. 3. } (respondent).

*Coal Mines Regulation Act, 1872 (35 & 36 Vict. c. 76), s. 51, r. 1 — Insufficient Ventilation in Mine—Expense of Alteration—Information—Liability of Manager.*

By the *Coal Mines Regulation Act, 1872*, (35 & 36 Vict. c. 76), s. 51, it is provided that, in the event of any contravention of the general rules set out in that section, the owner, agent, and manager shall be each guilty of an offence, unless he proves that he has taken all reasonable means to prevent such contravention.

The first of such general rules provides that an adequate amount of ventilation shall be constantly produced in every mine to render harmless noxious gases, so that the working places of the shaft of such mine, and the travelling roads to and from such working places, shall be in a fit state for working and passing therein.

The respondent, who was a certified manager of a colliery mine, at a salary of 1l. per week, was charged with an offence under section 51, rule 1. It was proved that the mine was improperly ventilated, and that the respondent might have improved the ventilation with the resources at his disposal, but that the requisite provision for the proper ventilation of the mine would have involved an outlay of 200l.:—Held, that the finding of the justices, that the respondent had omitted to employ the resources at his disposal for the improvement of the ventilation of the mine, disclosed an offence under section 51, for which he was liable to be convicted.

CASE stated under 20 & 21 Vict. c. 43.

At a Petty Sessions holden at Mold, on the 2nd of December, 1878, an information was preferred by the appellant against the respondent, under section 51 of the *Coal Mines Regulation Act, 1872*, for having, on the 12th of October, 1878, as manager of the Alyn Colliery, neglected to cause an adequate amount of ventilation to be constantly produced in the mine, so as to dilute and render harmless noxious gases, to such an extent that the working places of the shafts, levels, stables and workings of such mine, and the travelling roads to

and from such working places, should be in a fit state for working and passing therein (1).

The respondent was the certified manager of the Alyn Colliery.

The seam of the colliery in which the breach was alleged to have occurred was the main coal seam, ten feet thick, and the mine had an upcast and downcast shaft.

On the 12th of October, 1878, an inspector went underground in the main coal seam, and on inspecting the workings in the colliery noticed that the lamps hung therein were burning very dimly, and that this was caused by the presence of a large quantity of carbonic acid gas, commonly known as "black-damp." On proceeding to the working places at the bottom of the incline, a distance of from 400 to 500 yards from the pit's mouth, the ventilation was so bad with "black-damp," that it was impossible to keep a candle lighted there, and the inspector noticed that the candles of three men who were working there kept going out from the same cause, notwithstanding that the faces of these working places were

(1) By the *Coal Mines Regulation Act, 1872* (35 & 36 Vict. c. 76), s. 51, it is enacted that "An adequate amount of ventilation shall be constantly produced in every mine, to dilute and render harmless noxious gases to such an extent that the working places of the shafts, levels, stables and workings of such mine, and the travelling roads to and from such working places, shall be in a fit state for working and passing therein. . . .

"Every person who contravenes or does not comply with any of the general rules in this section shall be guilty of an offence against this Act; and in the event of any contravention of, or non-compliance with, any of the said general rules in the case of any mine to which this Act applies, by any person whomsoever, being proved, the owner, agent, and manager shall each be guilty of an offence against this Act, unless he proves that he had taken all reasonable means, by publishing and to the best of his power enforcing the said rules as regulations for the working of the mine, to prevent such contravention or non-compliance."

*Hall v. Hopwood, Q.B.*

only five or six yards from the main air current. This current was so weak from want of a proper system of ventilation as to be utterly useless for its intended purpose, the only obstacle to prevent the air which came down the downcast shaft from passing direct to the upcast shaft without passing through or ventilating the workings, being a canvas cloth hung across the main roadway. By the frequent passage of tubs through this cloth, the lower part of it was torn very much, and the air passed up by the upcast shaft instead of going round the workings.

The justices found that the requisite provision for properly ventilating the mine would have involved an outlay of 200*l.*, but that the respondent might have improved such ventilation with the resources at his disposal.

The respondent received 1*l.* a week as salary for his services in the colliery in question, and was the certified manager of another colliery in the same neighbourhood. It also appeared that a Mr. Meldram was one of the owners of the Alyn Colliery, and a director acting in the daily management thereof, and that the respondent had advised him and the other directors that a perfect system of ventilation was required, and that the cloth funnel in the main roadway was quite inadequate for the purpose of obstructing the air in a seam of coal of the thickness in question.

It was contended by the respondent that he was a mere paid servant of the company, not liable, under any circumstances, for the complaint laid, or at all events, if a manager, only to the extent of the means provided for him by his employers.

The appellant contended that the respondent, as manager, was directly liable by virtue of the Coal Mines Regulation Act, 1872, in respect of such contravention or non-compliance.

No evidence was called on the part of the respondent, whose evidence could not be taken under the Act.

The justices considered the defendant could not be held responsible for keeping the mine properly ventilated, seeing that it involved an outlay of 200*l.*, and that, as he had done his duty by complaining

to the resident managing director, the proceedings ought to have been taken against the owners of the mine; accordingly they dismissed the information.

The question for the opinion of the Court was whether, upon the above facts, the respondent had committed any offence against the Coal Mines Regulation Act, 1872.

*Gorst (A. L. Smith with him)*, for the appellant.—The justices were wrong in dismissing the information, for their finding shews that there was a contravention of rule 1, for which the respondent was responsible. They cited *Wynne v. Forrester* (2) and *Baker v. Carter* (3).

*Marshall*, for the respondent.—The information was properly dismissed. Even if the respondent was a manager at all within the meaning of section 51, it was no part of his duty to provide for the proper ventilation of the mine, and the finding of the justices shews that he did all that was required of him.

COCKBURN, C.J.—I confess I think it clear, upon the facts stated, that the respondent is legally liable. One of the rules appended to the 51st section of the Coal Mines Regulation Act, 1872, provides that there shall be an adequate amount of ventilation in every mine, and there is a proviso that neglect to comply with the rule, when proved, shall render the owner, agent, and manager liable to a penalty, "unless he proves that he had taken all reasonable means by publishing, and to the best of his power enforcing," the rule as a regulation of a mine. Here it is found as a fact that the ventilation was inadequate, and the only question which we have to decide is how far the responsibility rests with the respondent. No doubt it is the duty of the owner of a mine, in the first instance, to provide proper ventilation, and the manager who has to share the responsibility cannot reasonably be expected to expend his own funds. The statute, therefore, does

(2) 48 Law J. Rep. M.C. 140.

(3) 47 Law J. Rep. M.C. 87; Law Rep. 3 Ex. Div. 132.

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not render it necessary that the latter should spend his own moneys in providing the requisite machinery to secure proper ventilation. So far as that is concerned, he may claim exemption by shewing that he has pointed out the permanent alterations, or the introduction of machinery that is required, to the owners. The magistrates, therefore, are quite right in saying that the respondent was not liable for substantial alterations; but then they find that he had certain means at his disposal with which, had he so chosen, he might have improved the ventilation. Does this finding on the part of the justices render him liable? I think it does, with this reasonable qualification, that it is only with the means provided by his employer that he can be called upon to mitigate the evil. I read the case as finding this; therefore the respondent has failed to prove he was exempted under the 51st section. To that extent the justices were, in my opinion, wrong. I cannot say that the respondent ought not to be found guilty, although his offence is manifestly a very slight one. The case, therefore, must be remitted to the justices, with the opinion of this Court that it is one in which they may convict.

MANISTY, J., concurred.

*Case remitted.*

Solicitors—Solicitor to the Treasury, for appellant; J. P. Cartwright, Chester, for respondent.

[IN THE QUEEN'S BENCH DIVISION.]

1879. { THE QUEEN, on the prosecution  
Dec. 2. { of REDFEEN (respondent), v.  
WHITE (appellant).

*Public Health Act, 1875 (38 & 39 Vict. c. 55), sections 116, 117—Sale of Meat unfit for Human Food—Seizure by Inspector—Condemnation by Justice—Right of Owner to be heard.*

*By the Public Health Act, 1875 (38 & 39 Vict. c. 55), section 116, an inspector of*

*nuisances may, at all reasonable times, inspect any meat exposed for sale, or deposited in any place for the purpose of sale, or of preparation for sale, and intended for the food of man (the proof that the same was not exposed or deposited for any such purpose, or was not intended for the food of man, resting with the party charged), and if it appears to the inspector that the meat is unfit for the food of man, he may seize and carry the same before a justice. By section 117 if it appears to the justice that the meat seized is unfit for human food, he shall condemn the same and order it to be destroyed or disposed of; and the person on whose premises the same was found is made liable to a penalty on conviction, either by the justice who condemned the meat, or by any other justice having jurisdiction.*

*The appellant was convicted before two justices of having deposited meat for the purpose of sale or for the purpose of preparation for sale, found by an inspector of nuisances to be unfit for the food of man. The meat in question had been seized and carried away by an inspector, and had been ordered to be destroyed by a justice ex parte without any formal notice being given to the appellant. It was objected by the appellant that the meat could not be condemned and ordered to be destroyed by a justice ex parte and without notice to him to attend and shew cause against the same. It was also objected that the conviction was bad for duplicity:—Held, that the condemnation of the meat and order for destruction was an ex parte proceeding altogether apart from the punishment of the offender.—Held also, that the purpose for which the meat was deposited was properly charged in the alternative, and that consequently there was no duplicity.*

This was an appeal to the Court of Quarter Sessions for the county of Warwick, from a conviction under sections 116 and 117 of the Public Health Act, 1875, whereby the appellant was convicted on the 13th of May, 1879, by two justices, "for that on the 3rd of May, 1879, at the parish of Willoughby in the said county, certain meat, consisting of the carcasses of four sheep and two fore-quarters of another sheep were found

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by Valentine Redfern, the Inspector of Nuisances for the Rugby Rural Sanitary Authority, in a slaughter house on the premises of the said Thomas White there, and the said meat being there and then deposited in the said slaughter house for the purpose of sale, and of preparation for sale, and intended for the food of man, was then and there inspected and examined by the said Valentine Redfern, as such inspector as aforesaid, and was by him then and there found to be unwholesome and unfit for the food of man, and was by him thereupon seized and carried away and taken before Simon Haughton Fitzroy, Esquire, one of Her Majesty's Justices of the Peace for the county of Warwick, and the said meat so seized appearing to the said justice to be unwholesome and unfit for the food of man, the same was condemned by him, and ordered to be destroyed or otherwise disposed of, and we adjudge the said Thomas White for his said offence to be imprisoned in the House of Correction at Warwick in the said county of Warwick, for the space of three months" (1).

(1) By the Public Health Act, 1875, 38 & 39 Vict. c. 55. s. 116, "Any medical officer of health or inspector of nuisances may at all reasonable time inspect and examine any animal carcase, meat, poultry, game, flesh, fish, fruit, vegetables, corn, bread, flour or milk exposed for sale, or deposited in any place for the purpose of sale, or of preparation for sale, and intended for the food of man, the proof that the same was not exposed or deposited for any such purpose, or was not intended for the food of man, resting with the party charged; and if such animal carcase, meat, poultry, game, flesh, fish, fruit, vegetables, corn, bread, flour or milk, appears to such medical officer or inspector to be diseased, or unsound, or unwholesome, or unfit for the food of man, he may seize and carry away the same himself or by an assistant in order to have the same dealt with by a justice." By section 117: "If it appears to the justice that any animal carcase, meat, poultry, game, flesh, fish, fruit, vegetables, corn, bread, flour or milk so seized is diseased, or unsound, or unwholesome, or unfit for the food of man, he shall condemn the same, and order it to be

The said Valentine Redfern was duly appointed an inspector of nuisances in 1876 by the local authority, and was authorised to institute and carry on all such proceedings as are necessary under the provisions of the Public Health Act, 1875. The said conviction was obtained by him in pursuance of the general authority given to him.

The appellant was not present when the meat was seized and carried away in order to be dealt with by the justice, and no formal notice of its seizure was given to him before it was condemned and ordered to be destroyed, although such notice could easily have been given to him. The servants of the appellant were present when the said meat was seized, and were informed by the inspector that the meat would be taken before a justice to be condemned. The inspector, after he had seized the meat and while he was conveying the same to be condemned by the justice, met the appellant. Shortly after meeting the inspector, the appellant arrived at his own premises and there saw his servants and was informed by them that the meat had been seized. The appellant did not then or at any time

destroyed or so disposed of as to prevent it from being exposed for sale or used for the food of man; and the person to whom the same belongs or did belong at the time of exposure for sale, or in whose possession or on whose premises the same was found, shall be liable to a penalty not exceeding twenty pounds for every animal carcase of fish, or piece of meat, flesh, or fish, or any poultry, or game, or for the parcel of fruit, vegetables, corn, bread, or flour, or for the milk so condemned, or, at the discretion of the justice, without the infliction of a fine, to imprisonment for a term of not more than three months.

"The justice who, under this section, is empowered to convict the offender may be either the justice, who may have ordered the article to be disposed of or destroyed, or any other justice having jurisdiction in the place." By section 308 full compensation is to be made by the local authorities exercising the power of the Act, to any person who sustains damage by reason of such exercise of power.

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appear before the justice or apply to be heard on the question of the condemnation of the meat, nor did he appeal against such condemnation in any way, except by his appeal to Sessions.

Upon the hearing of the appeal it was objected, on behalf of the appellant, that the conviction was void for duplicity and uncertainty, in that by sections 116 and 117 of the Public Health Act, 1875, three distinct offences were created, namely, first, exposing for sale; second, depositing for the purpose of sale; third, depositing for the purpose of preparation for sale of unwholesome meat intended for the food of man, but that in the conviction the appellant is adjudged guilty of two of the three offences, whereas it did not appear from the conviction which of such two distinct offences was meant.

It was also objected that the appellant could not be convicted under sections 116 and 117 of the Public Health Act, 1875, unless and until the article seized and carried away by the inspector as unwholesome has been in due form of law condemned and ordered to be destroyed by a justice, and that such condemnation and order for destruction of the appellant's property could not legally be made *ex parte* and without notice to him to attend and (if he so chooses) to shew cause against the same.

The Sessions overruled the objections and affirmed the conviction, subject to the above case (2). The case and conviction having been brought up by certiorari, and a rule *nisi* to quash the order of Sessions having been obtained by the appellants,

*Vesey Fitzgerald*, for the respondent in the appeal, shewed cause.—The con-

(2) A portion of the case, as stated by the Sessions, which had reference to the question whether the adjudicating justices were, as members of the local authority, interested parties, and as such incapable of acting as justices, is omitted from the report, the appellant's counsel having admitted that he could not successfully argue the point after the decision in *The Queen v. Weymouth* (48 Law J. Rep. M.C. 139).

demnation of the meat and the order of destruction is a proceeding altogether distinct from the charge against the appellant, and may be made *ex parte*. The object of the Act of Parliament is to abate a serious nuisance, and that without delay; if, therefore, proper notice had to be given to any party where meat is seized, and he had a right to be heard before the meat was condemned, the utility of the statute would be seriously imperilled. Moreover, no real injustice is done to an owner by such a summary proceeding; for any damage that is sustained full compensation can be claimed from the local authorities, under section 308. The words, in section 116, "the proof that the same was not exposed or deposited for the purpose of sale, or was not intended for the food of man, resting with the party charged," must be read with reference to the subsequent proceedings under section 117, when the party is regularly charged.

As regards the contention of the appellant, that this conviction is bad for duplicity, there are only two offences disclosed—first, exposing for sale; second, depositing for the purpose (or of preparation for sale) unwholesome meat. The purpose was therefore properly charged in the alternative, and there is no duplicity.

*Channell*, for the appellant, supported the rule.—A full opportunity ought to have been given the appellant of being heard before the meat was condemned. The object of the Act was to prevent the injury which might arise from meat being sold for the food of man which was unfit for that purpose. It is plain that the 116th section contemplated some notice being given to an owner before his property was seized and condemned—*Gill v. Bright* (3).

Again, the conviction is bad for duplicity. There are three offences disclosed—first, exposing for sale; second, deposit for the purpose of sale; third, depositing for the purpose of preparation and sale—unwholesome meat intended for human food, and it is uncertain, from the terms of the conviction, for which of

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the latter two the appellant has been adjudged guilty.

FIELD, J.—I am of opinion that this conviction must be affirmed, and that the objections taken to it are bad. I will first of all deal with a comparatively small point, namely, as to whether the conviction is bad for duplicity. I quite agree that the law on the subject is accurately stated in *Paley on Summary Convictions*, and that the charge must be positive and certain, in order to protect a defendant from a second accusation, and in order that the judgment may appear appropriate to the offence. If, then, it had appeared that the offence was charged in the alternative, I should have had no difficulty in coming to the conclusion that the conviction could not be upheld. Now there might have been some ground for the contention if the appellant could have shewn that the section contained three distinct offences; but we think only two offences are to be found, and although there is at first blush something like an alternative air about the conviction, yet, when you come to look at its terms, the difficulty disappears, and it will be found that the defendant has been properly convicted of the offence with which he was charged.

The other point is one of greater difficulty, about which I have felt some doubts during the argument; indeed, had it not been for the 308th section, I am not at all sure at what conclusion I should have arrived. In order to see what the intention of the Legislature was, we must look at, first, the object of the Act, and secondly, the language used. Now this statute is known as the Public Health Act, and was passed to abate a number of nuisances, amongst others, the sale, or exposure for sale, of unsound meat for the food of man, which was quite unfitted for that purpose. Therefore, the object of the Legislature in passing this 116th section was the prevention of the sale of things unfit for the food of man, which was found to be a great evil, and the cause of much disease. Now let us see the mode in which the Legislature intended to sup-

press that mischievous practice. Rapidity of action in such cases was a matter of absolute necessity. In order to carry out the execution of the purposes of the Act, a public body have to be selected, and they are authorized to appoint an inspector of nuisances, and to their judgment is entrusted the appointment of a fit and proper person. Now, the inspector is clothed with extensive powers, and, so far as relates to unsound meat, his duties are as follows:—He must reasonably satisfy himself that the unsound meat is exposed or deposited for the purpose of sale, and if so satisfied, he may, without enquiry, carry away the meat to be dealt with by a justice. If such a primary cause as this entails inconvenience, and perhaps also an injustice, on the party whose property is seized, the evil, such as it is, must be undergone for the sake of the public good; moreover, an adequate remedy is provided under the compensation clause.

Now comes the question whether the inspector, having seized and carried away the meat in order to have it dealt with by a justice, is bound to give proper notice to the party before his property is condemned by a justice. In other words, must the inspector take out a summons, and the party be regularly charged, before the proceeding I have just alluded to can take place? It is but rarely that so extensive a power is given for the summary destruction of property; but the express object of the statute must be borne in mind, which was the speedy destruction of a noisome thing. If the contention on the part of the appellant was sound, a considerable time must necessarily elapse before the provisions of the statute could be put in operation, and its main object would therefore be defeated. Now is there to be anything in the shape of a hearing before the justice whose duty it is to condemn the meat? I think not, and that all he has to do is to satisfy himself that the inspector is properly qualified, and if so, the justice may condemn the meat on view, and order it to be destroyed, or so to be disposed of as to prevent it from being exposed for sale or used for the food

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of man. Thus the evil aimed at by the Legislature is got rid of. But it is also incumbent that the offender should not escape punishment; he is accordingly to be brought up, and is made liable to certain penalties. I read the words in section 116, "proof that the same was not exposed or deposited for any such purpose, or was not intended for the food of man, resting with the party charged," as being applicable to the charge made against the man, and not against the meat. The party, when charged, may discharge himself if he can by shewing that the meat was not exposed for sale at all, and in this way the interpretation of the statute becomes intelligible, and consistent with the intention of the Legislature. The order of the Sessions, therefore, confirming this conviction, must stand.

MANISTY, J.—I am of the same opinion, and have little to add to what has already been said by my brother Field. The 117th section limits the enquiry to this single point, namely, is or is not the meat that has been seized diseased or unsound or wholesome, or unfit for the food of man? The justice who condemns the meat has nothing to do with the enquiry whether the meat in question was exposed or deposited for sale; if it concerned him, there would have been an express provision in section 117 to that effect. I think that the interpretation put on the section by my brother Field is an intelligible and reasonable one, and that the 119th section, which empowers an inspector to get a search warrant to enter premises where he believes there is kept concealed diseased meat intended for sale for the food of man, throws some light on this construction. It seems to me that the provisions, as we have construed them, are just such as we should expect to find, having regard to the subject-matter of the Public Health Act. If it is eventually found, on enquiry, that the owner is not in default, but that the inspector has made a mistake, then the owner may, under section 308, receive compensation in the manner there pointed out. Any other construction would give rise to so many obstacles

—as, for instance, if the meat is to be kept, who is the proper person to keep it, and where ought it to be kept?—as to make the Act of Parliament almost a dead letter.

*Rule discharged; order of Sessions affirmed.*

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Solicitors—Mackeson, Taylor & Arnould, agents for Buller & Bickley, Birmingham, for appellant; Iliffe & Co., agents for E. Harris, Rugby, for respondent.

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[IN THE EXCHEQUER DIVISION.]

1879. { THE OVERSEERS OF ST. WERBURGH,  
Nov. 28. { DERBY (appellants) v. HUTCHINSON (respondent).

*Poor-rate—32 & 33 Vict. c. 41. s. 16—Occupier going out before the Rate discharged—Unoccupied Premises.*

*The 16th section of 32 & 33 Vict. c. 41 relieving the occupier who was in occupation at the time of making the rate, but who has gone out before it was wholly paid, from the rate except in proportion to the time he has occupied, applies only to the case where there is an incoming occupier, and not where the premises are left unoccupied.*

CASE stated under 20 & 21 Vict. c. 43 upon an information heard on the 8th of August, 1879, preferred by the appellants, for that the respondent being the occupier of certain premises within the parish of St. Werburgh, and duly assessed in a poor-rate made on the 30th of April, 1879, for the half year ending the 29th of September, 1879, had not paid the same, although lawfully demanded.

The respondent was the occupier of certain premises in the parish in question, and was duly assessed to the said poor-rate, which had been demanded of him by the appellants. The respondent at the time of the demand was about to

*Overseers of St. Werburgh, Derby, v. Hutchinson, Excs.*

give up possession of the premises to his landlord, who intended to pull down the house and rebuild on its site. On the 7th of August the respondent was in actual possession of the premises, and did not in fact give up possession until the 9th of August, 1879, when he quitted them, without having paid the amount of rate at which he was assessed. No new tenant would succeed or come into occupation of the premises until they were rebuilt, which would not be until long after the 29th of September, 1879. The justices dismissed the summons.

The statute 32 & 33 Vict. c. 41. s. 16 enacts, "If the occupier assessed in the rate when made shall cease to occupy before the rate shall have been wholly discharged, or if the hereditament being unoccupied at the time of the making of the rate become occupied during the period for which the rate is made, the overseers shall enter in the rate book the name of the person who succeeds or comes into the occupation, as the case may be, and the date when such occupation commences so far as the same shall be known to them, and such occupier shall from thenceforth be deemed to be actually rated from the date so entered by the overseers, and shall be liable to pay so much of the rate as shall be proportionate to the time between the commencement of his occupation and the expiration of the period for which the rate was made, in like manner and with the like remedy of appeal as if he had been rated when the rate was made; and an outgoing occupier shall remain liable in like manner for so much and no more of the rate as is proportionate to the time of his occupation within the period for which the rate was made, and the 12th section of the statute 17 Geo. 2. c. 38 shall be repealed."

*A. Glen*, for the appellants.—The occupier is, under the statute of Elizabeth, liable for the whole of a rate made when he is in occupation, although he may cease to occupy before the period for which the rate is made has expired. The 16th section of the 32 & 33 Vict. c. 41 applies to the case where there are successive tenants, and not where a tenant

goes out and no one succeeds him. [He was stopped by the Court.]

*A. Morley*, for the respondent.—The section must be read thus: "If the occupier assessed in the rate when made shall cease to occupy before the rate shall have been wholly discharged" certain things shall happen if there be an incoming occupier, and generally "an outgoing occupier shall remain liable for so much and no more of the rate as is proportionate to the time of his occupation." If the last clause was not intended to be general, but applicable only to the case where there was both an outgoing and incoming tenant, the definite article "the," not "a," would have been used. This was the intention in repealing the repealed statute.

THE COURT (1) were of opinion that the section applied to a change of tenancy, in which case the two tenants were to pay rateably; but as to the case of an outgoing tenant and a subsequent vacancy, it left the case as it found it. The words "outgoing occupier" in the last clause of the section meant outgoing occupier with a successor.

*Judgment for the appellants without costs; leave to appeal.*

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Solicitors—Edmund Warriner, agent for W. B. Hextall, Derby, for all parties.

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(1) Kelly, C.B., and Stephen, J.

## [IN THE QUEEN'S BENCH DIVISION.]

1879. { THE QUEEN, on the prosecution of  
Dec. 3. { THE GUARDIANS OF THE MEDWAY  
UNION (respondents) v. THE  
GUARDIANS OF THE MAIDSTONE  
UNION (appellants).

*Poor Law—Settlement of Pauper Lunatic—Husband and Wife—Desertion by Husband—Order of Removal—Wife's Settlement—Statutes 24 & 25 Vict. c. 55. s. 3, and 39 & 40 Vict. c. 61. s. 34.*

By 24 & 25 Vict. c. 55. s. 3, a married woman who has been deserted by her husband, and who, after such desertion, has resided for three years (altered by 29 & 30 Vict. c. 11. s. 1, to one year) in such a manner as would, if she were a widow, render her exempt from removal, shall not be liable to be removed from the parish wherein she shall be resident unless her husband returns to cohabit with her.

A pauper lunatic was married to G. B. in 1840, and resided with her husband for some ten years afterwards. She committed adultery, and was eventually told by her husband to leave his house on that account. She left accordingly, and never returned to cohabit with him. From 1865 up to the time of her removal to the lunatic asylum in 1877 she resided at Chatham, and such residence was in such manner and under such circumstances as would have rendered her irremovable had she been a single woman. The husband's settlement was in the M. Union:—Held, that there had been a "desertion" of the pauper by her husband within the meaning of 24 & 25 Vict. c. 55. s. 3, and that consequently the pauper did not follow his settlement, but was irremovable from Chatham.

Whether the pauper acquired a settlement by residence at Chatham under the Divided Parishes, &c. Act (39 & 40 Vict. c. 61), s. 34, quære.

This was a case stated by the Court of Quarter Sessions for Kent, on appeal in which the guardians of the Maidstone Union were the appellants, and the guardians of the Medway Union were the respondents. The appeal was against an order of justices, made on February 18th, 1877, adjudicating the settlement of a

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pauper lunatic to be in the Maidstone Union.

The sessions confirmed the order subject to a case. The order and case were brought up by certiorari, and a rule nisi to quash the order of sessions obtained.

The pauper lunatic was married to George Baldock in 1840 at Gillingham, Kent, and resided with her husband for some ten years afterwards. During that time the pauper committed adultery and left her husband's house on one occasion for about three months, but returned to him. She afterwards frequently left her husband's house for a week at a time, under the pretence that she was going to work with her sister-in-law; but the husband being informed of her misconduct accused her thereof, and the pauper thereupon admitted having committed adultery and being in the family way. Her husband on that account shewed her the door, and told her to leave his house. She left him accordingly, and was afterwards confined in the work-house of the respondent union.

She never returned to cohabit with her husband, but cohabited with various men in Chatham, and eventually she went through the ceremony of marriage on the 5th of July, 1865, with a man named Underdown, and resided continuously with him in Chatham in the respondent union up to the time of her removal to the lunatic asylum on the 8th day of May, 1877. Such residence was in such manner and under such circumstances as would have rendered the pauper irremovable had she then been a single woman. From the time of her confinement until May 8, 1877, the pauper lunatic had never received parish relief.

It was admitted that the residence of George Baldock had been in Maidstone Union for the last thirteen years, and that he was thereby lawfully settled in such union.

The questions for the opinion of the Court were:—

1. Did the pauper lunatic acquire a settlement by residence in Chatham in the respondents' union in her own right under 39 & 40 Vict. c. 61. s. 34?

2. Was the pauper lunatic irremovable from Chatham by virtue of 24 & 25 Vict.

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c. 55. s. 3, as amended by 29 & 30 Vict. c. 11. s. 1, at the time of her removal to the said lunatic asylum, or at the time the said order adjudicating her settlement was obtained by the respondents.

If either of the above questions was answered by this Court in the affirmative, the order appealed against and the order of quarter sessions confirming the same was to be respectively quashed, otherwise the order of sessions was to stand.

*Kingsford*, for the appellants.—It is contended that the facts shew that the residence of the pauper lunatic was such as to give her a settlement under 39 & 40 Vict. c. 61. s. 34—see *The Queen v. The Guardians of the Leeds Union* (1), which is exactly in point.

Again, the pauper was irremovable, by virtue of 24 & 25 Vict. c. 55. s. 3, as amended by 29 & 30 Vict. c. 11. s. 1, by which a married woman who has been deserted by her husband, and who, after such desertion, has resided for one year “in such a manner as would, if she were a widow, render her exempt from removal, shall not be liable to be removed from the parish wherein she shall be resident, unless her husband return to cohabit with her.” No doubt it will be argued she was not deserted, and that accordingly the 24 & 25 Vict. c. 55, has no application; but the authorities which seem to favour such a contention will be found to be divorce proceedings in which married women have endeavoured to assert a desertion arising out of their own misconduct. He also cited *The Queen v. St. Mary, Islington* (2).

*Winch*, for the respondents.—A married woman living apart from her husband by consent follows the settlement of her husband, and if she becomes chargeable is removable to such settlement. The 23 & 24 Vict. c. 55. s. 3, does not contemplate the case of a married woman living apart from her husband by consent. In *The Queen v. The Guardians of the Leeds Union* (1) the pauper was an illegitimate

child who had been totally abandoned; here there has been no abandonment or desertion—*Thompson v. Thompson* (3).

COCKBURN, L.C.J.—I think there was such a desertion as to bring the case within the statute which provides that “where a married woman shall have been or shall be deserted by her husband, and shall have resided for three years”—since altered to one year—“in such a manner as would if she were a widow render her exempt from removal, she shall not be liable to be removed from the parish wherein she shall be resident, unless her husband return to cohabit with her.” I cannot bring myself to think that the settlement of the husband belonged to the wife, inasmuch as the latter had been living apart from him for a considerable space of time. Moreover, it is important to remember that this is not a case of a wife living apart from her husband by mutual consent. The wife is a woman who has misconducted herself on more than one occasion by committing adultery with other men, until at length she became in the family way, and thereupon her husband put her out of doors. This may perhaps not amount to a desertion in the ordinary acceptance of the term; but the meaning of the statute I have referred to is that where the wife has been residing in a different place from her husband for a prolonged period, she shall be considered for poor law purposes as not being bound by the marriage tie, and as living apart. It seems to me to make but little difference whether the husband voluntarily goes away and so misconducts himself, or goes away in consequence of the misconduct of his wife. I am of opinion, upon the facts as stated, that the residence of the husband was no longer the residence of the pauper, and that the latter became by reason of her residence irremovable from Chatham.

MANISTY, J.—I quite agree. The fair interpretation of what happened is that this woman was, rightly or wrongly, sent away from her home for misconduct by her husband, and left as a free woman. She subsequently set up an altogether separate

(1) 48 Law J. Rep. M.C. 129; Law Rep. 4 Q.B. D. 323.

(2) 39 Law J. Rep. M.C. 187; Law Rep. 6 Q.B. 448.

(3) 1 Sw. & Tr. 231; 27 Law J. Rep. P. M. & A. 65.

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residence for a period, and under such circumstances as to render her exempt from removal, her husband never having returned to cohabit with her. That is the construction to be put on 24 & 25 Vict. c. 55. s. 3, and it is not therefore necessary to consider the meaning of the 34th section of the Divided Parishes, &c., Act.

*Order of sessions quashed.*

Solicitors—Kingsford & Co., agents for Beale, Hoare & Co., Maidstone, for appellants; Nickenson, Prall & Nickenson, agents for Prall & Son, Rochester, for respondents.

## [IN THE COMMON PLEAS DIVISION.]

1879. { KENRICK (appellant) v. THE  
Nov. 27. { CHURCHWARDENS AND OVER-  
SEERS OF THE PARISH OF  
GUILDFIELD (respondents).

*Rating—Sporting Rights—Severed from the Occupation of the Land—37 & 38 Vict. c. 54. s. 6. sub-sect. 2.*

*Where the owner of land occupies it himself and demises the right of sporting to another, the right of sporting is severed from the occupation of the land within the meaning of 37 & 38 Vict. c. 54. s. 6. sub-sect. 2, so as to make the lessee of the right of sporting rateable.*

*The Queen v. Battle, Sussex (36 Law J. Rep. M.C. 1; Law Rep. 2 Q.B. 8) distinguished.*

CASE stated under 12 & 13 Vict. c. 45. s. 11.

1. By a deed dated the 2nd of April, 1877, Mrs. Curling, the owner of the Maesmawr estate, in the parish of Guildfield, in the county of Montgomery, granted to the appellant the exclusive right of sporting over the said estate, together with the use of the mansion-house and two cottages thereon and twenty-five acres of land, being part of the said estate, for a term of five years from the 25th of March, 1877, at a total annual rental of 315*l*.

2. The said estate contained about 1,750 acres; of this 707 acres consisted of

woodlands and were retained by Mrs. Curling in her own occupation (1).

3. The overseers of the poor of the parish of Guildfield rated the appellant in respect of the sporting right over the whole of the said estate.

4. The question for the opinion of the Court was whether the right of sporting over the 707 acres of woodlands retained in the occupation of the owner thereof, Mrs. Curling, was severed from the occupation of the said land within the meaning of the 37 & 38 Vict. c. 54. s. 6 (2), so as to entitle the persons making that rate to rate the appellant in respect thereof.

*Witt (Gully and F. Marshall with him), for the appellant.*—The right of sporting over these 707 acres is not severed from the occupation of the land within the meaning of 37 & 38 Vict. c. 54. s. 6. sub-sect. 2 (2). Under the law as it stood previous to this Act, where the land was let to one and the right of sporting to another the right of sporting could not be rated; the tenant could not be rated because he had not the right, and the owner of the right could not be rated because he was the owner of an incorporeal hereditament and did not appear on the rate-book. It was to remedy this state of things this Act was passed, but it was never intended to alter the incidence of the rate, but only to make that rateable which was not rateable before. A demise of a right of shooting, where the owner of the land occupied the land, was treated as not severed in *The Queen v. Battle, Sussex* (3).

[LORD COLERIDGE, C.J.—Under the present Act you may rate either the landlord, as in *The Queen v. Battle, Sussex* (3), or the lessee.]

Not unless the right is severed. This Act was intended to meet the case where the right of sporting is completely

(1) The remaining 1,008 acres were let to tenant farmers.

(2) 37 & 38 Vict. c. 54. s. 6 (sub-sect. 2).—“Where any right of sporting, when severed from the occupation of the land, is let, either the owner or the lessee thereof, according as the persons making the rate determine, may be rated as the occupier thereof.”

(3) 36 Law J. Rep. M.C. 1; Law Rep. 2 Q.B. 8.

*Kemrick v. Churchwardens, &c. of Guilefield, C.P.*

severed from the occupation of the land, as in the case of manorial rights.

[LORD COLERIDGE, C.J.—In *The Queen v. Battle, Sussex* (3), the right could not have been rated if severed.]

The whole point of that case is that the right was not severed. In the present case it is likewise not severed, and therefore the lessee of the shooting is not rateable; unless it is severed, the lessee is not rateable, and we have the decision of the Queen's Bench to shew that in a similar state of things the right of sporting was not severed. In order to interpret the Act, the law as it stood formerly must be looked at, and inasmuch as in *The Queen v. Battle, Sussex* (3) the same circumstances were held not to constitute a severance, therefore there is no severance in the present case, and consequently the proper person to be rated is the owner and occupier of the land.

*McIntyre (Alexander Glen with him)*, for the respondent, was not called on.

LORD COLERIDGE, C.J.—I am of opinion that the respondents were entitled to rate the appellant. The question is whether under this Act the lessee of the right of shooting can at the option of the persons making the rate be separately rated in respect of such right, and I am of opinion that he can.

Previous to this Act various rights arising out of land were not the subject-matter of separate rating, they were not within the 43 Eliz. c. 2. The result, which was considered to be unfair was, that in many cases the right person escaped or the wrong person was rated. Parliament then passed an Act enacting that certain rights arising out of land should be the subject-matter of separate rating, and amongst them sporting rights, "when severed from the occupation of the land;" it was right to say "severed" because when joined to the occupation and the value of the occupation was thereby enhanced, they would be rated by the increase of rate which would be added to the land by reason of such enhanced value. By the Act therefore they are created rateable properties, and section 6, sub-section 2, says that when severed and let, either the owner

or lessee thereof—that is, either the owner or lessee of the right of sporting, may be rated.

The facts of the case are shortly that Mrs. Curling, who is the owner of the estate, has demised a small portion to the appellant and the separate right of shooting over the whole of the estate, and she keeps a portion of the estate in her own occupation. Is not that an instance of the right of sporting being severed from the occupation of the land? Had there been no authority, no one for a moment could have doubted this was just the sort of case the Act was intended to meet. But it is said another interpretation should be placed on these facts, because in a case in the Queen's Bench a different interpretation was placed on the word "severed." But when that case and the law as it stood at that time is considered, it does not seem to support the contention. It was a case in which the Queen's Bench was considering the right of an owner who kept the land in his own occupation, and let the right of shooting, to claim exemption on the ground that the shooting was severed from the occupation of the land. The Queen's Bench say, "Not at all, you admit you receive rent for the shooting, and therefore your land which you occupy is so much enhanced in value, and you must be rated at the enhanced value." No doubt in a certain sense the Lord Chief Justice holds there is no severance, for he holds there was no such severance as would exist in the case where the owner had let the land to one, and the right of shooting to another, a severance which would render it unfair to rate the occupier for a right which he did not possess.

But in this case we have to deal with an Act which for the time uses the word sever in a legislative sense, and we have to deal with a property which for the first time is made the subject of separate rating. The Act appears to me singularly to describe the state of facts of this case, and under these circumstances I think we are only following the express words of the Act in holding the appellant to be rateable. Our judgment must, therefore, be for the respondents,

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LINDLEY, J.—I am of the same opinion. The question is whether the rate levied on the lessee of the right of sporting has been correctly made within the provisions of section 6 (sub-section 2). The persons making the rate have the option of rating either the owner or lessee, and we have not to decide whether they have exercised a fair discretion, but the question is one of law, and turns on the meaning of the word "severed." The appellant has the enjoyment of the right of sporting by a lease under seal for five years, and during that five years one would have thought, apart from authority, that there would be a severance. But it is said that it is not so, because under similar circumstances *The Queen v. Battle, Sussex* (3) the right of sporting was held not to be severed, but when we look at the authority the point does not seem to have been decided. The point there decided is that before this Act Mrs. Curling might have been rated. In the course of the argument the Lord Chief Justice certainly describes the right of sporting as separated from the occupation, and in the judgment he appears to treat the right as severed, though not severed as in *The Queen v. Thurlstone* (4). That case, *The Queen v. Battle, Sussex* (3), does not appear to me to be authority for holding that when the owner of the land demises the right of sporting by an irrevocable deed there is no severance.

*Judgment for the respondents.*

Solicitors—J. Arthur Talbot, agent for Talbot & Woosnam, of Newtown, Montgomeryshire, for appellant; Jones, Blaxland & Son, agents for W. A. Pughe, Llanfyllin, for respondents.

[IN THE COURT OF APPEAL.]

(Appeal from the Queen's Bench Division.)

1879. { THE QUEEN, on the prosecution  
Dec. 16. { of H. CRISP, v. PEMBERTON  
AND ANOTHER, Justices.  
THE SAME v. SMITH AND AN-  
OTHER.\*

*Pauper Lunatic in Workhouse—Where Resident—Order for Removal to Asylum made by Officiating Clergyman*—16 & 17 Vict. c. 97. sect. 67; 7 & 8 Vict. c. 101. sect. 56—*Practice—Appeal from Order of Sessions—Appeal from Divisional Court without Leave—Judicature Act, 1873, sect. 45.*

It is provided by 16 & 17 Vict. c. 97. sect. 67, that in certain cases a pauper deemed to be a lunatic may be examined by the officiating clergyman of the parish in which he is resident, and that an order may be made by that clergyman and another person, directing him to be received into an asylum.

It is enacted by 7 & 8 Vict. c. 101. sect. 56, that for the purpose of relief, settlement and removal of poor persons, the workhouse of a union shall be considered as situated in the parish to which such poor person is chargeable:—

Held, affirming the decision of the Queen's Bench Division, that an order for the removal of a pauper lunatic under 16 & 17 Vict. c. 97 is not an order within sect. 56 of 7 & 8 Vict. c. 101, and that such an order made by the officiating clergyman of O., for the removal of a pauper then in the workhouse of O. was duly made, although the pauper did not, before entering the workhouse, reside in the parish of O.

An appeal from an order of the Queen's Bench Division, discharging a rule for a certiorari to bring up an order of justices in petty sessions, is not an appeal from an inferior Court within sect. 45 of the Judicature Act, 1873, and no leave to appeal is required.

Appeal by the prosecutor, H. Crisp, from an order of the Queen's Bench Division, discharging a rule to bring up by certiorari an order made on him by W.

\* *Coram* Bramwell, L.J.; Brett, L.J.; Cotton, L.J.

(4) 1 E. & E. 502; 28 Law J. Rep. M.C. 106.

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Pemberton and J. Wilkinson, two justices of Cambridgeshire, and also an order made by G. Smith and Rev. G. Hale.

It appeared from the affidavits, that, on November 8, 1878, Mary Crisp, the wife of H. Crisp, who lived in Sheffield, was residing in the parish of Grantchester, and that on November 12 she was received into the workhouse of Chesterton Union, in which union Grantchester is situated; she was afterwards removed by an order professing to be made under the 67th section of 16 & 17 Vict. c. 97 (1), to an asylum. This order was signed by G. Smith, a relieving officer of Chesterton Union, and the Rev. G. Hale, an officiating curate of Chesterton.

On the 30th of November H. Crisp, the husband of the lunatic, was summoned before the justices, and was ordered to contribute to her maintenance, pursuant to the provisions of 13 & 14 Vict. c. 101. sect. 5, and 39 & 40 Vict. c. 61. sect. 20 (2). Two rules were then obtained at his

(1) By 16 & 17 Vict. c. 97. sect. 67, it is enacted, "That it shall be lawful for any justice, upon notice given to him . . . or upon his own knowledge, without any such notice as aforesaid, to examine any pauper deemed to be a lunatic, at his own abode or elsewhere, and to proceed in all respects as if such pauper were brought up before him, in pursuance of an order for that purpose; provided also, that in case any pauper deemed to be lunatic cannot, on account of his health or other cause, be conveniently taken before any justice, such pauper may be examined at his own abode or elsewhere, by an officiating clergyman of the parish in which he is resident, together with a relieving officer, or if there be no relieving officer, an overseer of such parish . . . and such officiating clergyman, together with such overseer, or such relieving officer, shall by an order . . . direct such pauper to be received into such asylum as herein-after mentioned. . . ."

(2) 13 & 14 Vict. c. 101, sect. 5, provides that, "Where any married woman being lunatic shall be duly removed to any asylum . . . under any of the statutes in such behalf, any two justices having jurisdiction in the place wherein the husband of such lunatic shall dwell, upon application by or on behalf of the guardians of the union, or of the parish, having separate boards of guardians, or the overseers of the parish, to which union or parish respectively such lunatic pauper shall be or become chargeable, may summon such husband to appear before them . . . and such justices may (if they think fit) make an order upon him to pay such sum weekly or otherwise, for or towards the cost of the maintenance of

instance; one, calling on the justices, and the other on G. Smith and the Rev. G. Hale, to shew cause why a *certiorari* should not issue, to bring up and to quash the two orders made by them respectively.

Both these rules were afterwards discharged. No leave to appeal was given. The prosecutor appealed.

*L. Smith* (with him *Cockerell*), for the respondent.—There is a preliminary objection to the hearing of the first of these appeals. The Court has no jurisdiction. It is an appeal from an order of the Queen's Bench Division, discharging a rule calling on justices to shew cause why an order of Sessions, and in this case of petty sessions, should not be quashed. This appeal is therefore within the very terms of section 45 of the Judicature Act, 1873; and as no leave to appeal has been given, the determination of the case by the Queen's Bench Division is final. Appeals from Sessions are, by section 45, and by the decision of the House of Lords in *The Overseers of Walsall v. The London and North Western Railway Company* (3), where, however, leave to appeal was given, brought within the definition of appeals from inferior Courts, and therefore this appeal, which is, in fact, an appeal brought for the purpose of reversing a decision of magistrates in sessions, cannot be brought unless leave has been given.

[BRAMWELL, L.J.—We think that we have jurisdiction to hear this appeal.]

*Gully and Graham*, for the prosecutor.—The order under which Mary Crisp was removed to the asylum is bad, and therefore the subsequent order on the husband for contribution is bad. The provisions of the statute (1) have not been followed. No reason was given why the pauper

such lunatic, as . . . shall appear to them proper."

39 & 40 Vict. c. 61. sect. 20, provides that where such an order is sought for, the justices having jurisdiction in the union or parish, the guardians whereof shall make the application, shall be empowered to issue the summons and make the order instead of the justices having jurisdiction in the place where the husband may dwell.

(3) 48 Law J. Rep. M.C. 66; Law Rep. 4 Ap. Ca. 80.

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was not taken before a magistrate; moreover, the clergyman who signed the order described himself as of Chesterton, whereas, by virtue of 7 & 8 Vict. c. 101. sect. 56 (4), this pauper lunatic must, for the purposes of relief, such as this was, be considered to be resident in Grantchester, and an order signed by a clergyman of another parish is invalid. Such an order is only a fact in the case, it is not a judicial proceeding, and therefore the justices should not have made a further order upon it until they had satisfied themselves that it was a proper and valid order, for unless they were satisfied that this married woman had been "duly removed" (2) they could have no jurisdiction to make the order for contribution.

*L. Smith and Ockerell*, for the respondents, were not heard.

BRAMWELL, L.J.—I think that this is a clear case, and that the appeal cannot be allowed. It is necessary to look at the actual place of abode of this woman, in order to construe the 67th section of this Act, which we have to consider. I do not think that the provisions of 16 & 17 Vict. c. 97, are to be controlled or interpreted by the language of the 56th section of 7 & 8 Vict. c. 101. The enactment in the earlier statute means that when it is necessary to consider where the settlement of a person should be, or where the burden of maintenance should fall, then, even if the person is in a workhouse, still, for such purposes, regard must be had to the place where that person's previous abode was. Those considerations do not apply here. The order of removal was duly made, the justices had jurisdiction, they proceeded legally, and the judgment of the Queen's Bench Division must be affirmed.

BRETT, L.J.—I am of the same opinion. The question under 16 & 17 Vict. c. 97,

(4) 7 & 8 Vict. c. 101. s. 56, enacts, "That for the purposes of relief, settlement and removal of poor persons, and the burial of the poor, the workhouse of any union or parish . . . shall be considered as situated in the parish to which each poor person respectively to be relieved, removed or buried, or otherwise concerned in any such purpose, is or has been chargeable." . . .

is, what was the parish in which this alleged lunatic was abiding? I think that where she was abiding there she was also residing, and if she was residing in Chesterton, where she was undoubtedly abiding, then this officiating clergyman could make the order.

I think this woman was both abiding and residing in Chesterton; it is admitted that this clergyman was an officiating clergyman of Chesterton, and therefore he could sign this order. It has been suggested that if regard be paid to the provisions of 7 & 8 Vict. c. 101, we must hold that this woman was residing elsewhere; but I am of opinion that that statute was only passed to prevent residence in a workhouse from breaking a person's right to settlement in his or her parish; and I do not think that those provisions affect the construction to be placed on the section of 16 & 17 Vict. c. 97, which we have to consider, and which was passed *alio intuitu*. This order of removal was duly made, and therefore the second question does not arise.

COTTON, L.J.—The question is whether this woman was residing in Chesterton within the meaning of section 67 of 16 & 17 Vict. c. 97. It is said that 7 & 8 Vict. c. 101 prevents her from being treated as a resident. I am of opinion that this order for removal is not an order for removal within the meaning of the earlier statute, and the removal not such a removal as was intended by that statute. The technical meaning of the word "removal" in 7 & 8 Vict. c. 101, is not the meaning which the word "removal" has in 16 & 17 Vict. c. 97, and I agree that the judgment of the Queen's Bench Division must be affirmed.

*Judgment affirmed.*

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Solicitors—R. Davies, agent for Smith, Wednesbury, for prosecutor; Montagu, Scott & Baker, agents for Barlow, Palmer & Bonnett, Cambridge, for respondents.

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## [IN THE COURT OF APPEAL.]

*(Appeal from the Queen's Bench Division.)*

1879. { THE QUEEN (on the prosecution  
Dec. 19. { of the Lewisham Board of  
Guardians) v. THE LONDON,  
BRIGHTON AND SOUTH COAST  
RAILWAY COMPANY.\*

*Metropolis Management Act, 1855 (18 & 19 Vict. c. 120), sect. 159—Rate—Inequality of Benefit—Exemption of, or Levy of Rate at a Lower Scale on, part of a Parish—Description of such part in Precept.*

*By the Metropolitan Management Act, 1855, section 158, district boards may require the overseers of parishes within their district to levy the sums which such boards may require for the execution of the Act. By section 159, district boards can exempt or rate on a lower scale parts of parishes not benefited or benefited to a less degree than other parts by such expenditure.*

*The overseers of L. were required, by a precept of the district board, to levy a sum for the expenditure incurred in the execution of the above Act. The precept directed that, as regards such parts of "the parish as consist of lands used as arable, meadow or pasture lands only, or as woodland, orchard, market, hop, herb, flowers, fruit or nursery market garden," the rate should be levied on a lower scale. There was a considerable quantity of such land in the parish, the whole of which was assessed at the lower scale, though it did not lie altogether, but was scattered about,—*

*Held (affirming the decision of the Queens Bench Division), that the rate was good, and that the precept sufficiently described the nature of the property to be rated at the lower rate.*

*Appeal from the decision of the Queen's Bench Division (reported 48 Law J. Rep. M.C. 116), where the case stated on appeal from Sessions, is fully set out.*

*The guardians of the poor of Lewisham made a rate as overseers, under the following precept:—*

*"The board of works for the Lewisham district, constituted by the Metropolis Management Act, 1855, in pursuance of*

*the provisions of the said Act, and of the Acts for amending and extending the same, hereby order and require the guardians of the poor of the parish of Lewisham to levy within the said parish the sum of 11,524l., for the purpose of defraying the expenses already or hereafter to be incurred by the said board, in the execution of the said Act or Acts, and to pay the said sum to the London and Westminster Bank, bankers of the said board, by two equal instalments of 5,762l. each, the first on the 7th day of February, and the second on the 23rd day of March, 1876. And it appearing to the said board that the expenses in respect of which the said sum of 11,524l. is required, are not for the equal benefit of the said parish, the said board do further order and require, that the rate or rates to be raised in pursuance of this present precept shall, as regards all such parts of the said parish as consist of land used as arable, meadow or pasture land only, or as woodland, orchard, market, hop, herb, flowers, fruit or nursery market garden, hop, herb, flower, fruit or nursery ground, be assessed and levied in the proportion of one-fourth part only of the net value of such land."*

*The parish of Lewisham consists partly of land covered with houses, and partly of land under cultivation, which does not all lie together, but is scattered through the parish. All such land, whether used as arable, meadow or pasture land, or as woodland, garden, hop, herb, flower, fruit or nursery ground, was rated to the rate mentioned in the above precept at 2½d. in the pound, and all other property was rated to the rate at 10d. in the pound. The property of the railway company, who appealed to the Quarter Sessions against the rate, consisted of land covered with buildings and railways, and none of it was land under cultivation; the whole of their property was rated at 10d. in the pound.*

*The rate was confirmed at Quarter Sessions, subject to the opinion of the Queen's Bench Division on two questions, first, whether the rate was good in law; second, whether such property of the railway company as consisted of lands used for the railway ought not to be rated at the lower rate.*

*A certiorari having issued, and a rule*

\* *Coram* Bramwell, L.J.; Brett, L.J.; Cotton, L.J.

*The Queen v. London, Brighton, &c. Rail. Co. (App.), Q.B.*

was to quash the order of sessions having been obtained, it was afterwards discharged and the order of sessions affirmed.

The railway company appealed.

*J. Brown and Oppenheim*, for the appellants.—The first question which was raised for the opinion of the Queen's Bench Division is the only question which the case enables the appellants to raise here. The Queen's Bench Division seems to have considered *Howell v. The London Dock Company* (1) as a decision in point; but in that case it was found that the expenses levied included the expenses of paving, so that it is not decisive of the case; and it is to be observed that *Erle, J.*, in *The Queen v. The Great Western Railway Company* (2) said that that case did not lay down any general rule, as it was decided on the special facts there before the Court. The rate levied here is without doubt levied in pursuance of the precept, but the precept is bad, and therefore the rate must be bad. It does not follow the requirements of the statute (3). It fails to describe the lands on which the lower rate is to be levied by sufficient description; it should describe them by metes and bounds, and it should not leave to the overseers the duty of ascertaining what area is to be partially exempted; it in fact delegates to others the duty which the statute imposes on the district board.

(1) 8 E. & B. 212; 27 Law J. Rep. Q.B. 177.

(2) E. B. & E. 613, note a; 28 Law J. Rep. M.C. at p. 64.

(3) The Metropolis Management Act, 1855 (18 & 19 Vict. c. 120), by section 158 empowers vestries and district boards to require overseers to levy the sums which are required for defraying the expenses of the Act.

By section 159, "Where it appears to any vestry or district board that all or any part of the expenses for defraying which any sum is . . . ordered to be levied have or has been incurred for the special benefit of any particular part of their parish or district, or otherwise have or has not been incurred for the equal benefit of the whole of their parish or district, such vestry or board may by any such order direct the sum or sums necessary for defraying such expenses, or any part thereof, to be levied in such part, or exempt any part of such parish or district from the levy, or require a less rate to be levied thereon, as the circumstances of the case may require."

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*M. White and Kingsford*, for the respondents.—The description in this precept is ample. The duty of the board is to state in their precept what is to be rated at a lower rate, and then it is the duty of the overseers to apply the description given in the precept to the various lands in the parish.

They were stopped by the Court.

BRAMWELL, L.J.—I am of opinion that this judgment should be affirmed. The objection taken is that the land to be exempted from the full rate, or to be assessed at the lower rate, has not been otherwise specified than by describing the use to which it has been put. It is said that no distinct area has been described to which the partial exemption can apply, that no such area has been specified by metes and bounds. I do not think that the district board is bound to give such a specification, and I think that a sufficient specification has been given by the general description in the precept, which mentions the use to which the land is put. Indeed, there is some advantage in such a description, since the partial exemption refers to the condition of the property at the time when the rate is made. I do not think in any case that it is for the appellants here to complain. Perhaps if any owner of land on which the rate is imposed thought himself aggrieved because the use of the property had changed since the rate was ordered to be levied, he might possibly appeal; but I do not think that the appellants here have any cause for complaint.

BRETT, L.J.—Cases and facts in cases of this description are always stated with reference to the question raised and intended to be raised in the case. Now only one question is raised before us, and that is, whether this rate is bad in law under the provisions of section 159 of the Metropolis Management Act, 1855. That is the only question brought before us, and advisedly so, and that is the only question on which we have to give a decision. The objection taken is an objection to the precept. The precept expressly professes to deal with parts of the parish, and it is urged that it cannot do so pro-

*The Queen v. London, Brighton, &c. Rail. Co. (App.), Q.B.*

perly. It is admitted that the precept might require all such parts to be assessed at a lower rate if it described such parts properly, but it is said that the precept is bad because the description of the parts to be partially exempted is a bad description.

This precept is an order which is made under section 159 of the Act, and if it sufficiently complies with the requirements of the section no objection can be made. If we look at that section, we find that the district board can levy the sums necessary to defray these expenses on part of the parish, and the section says nothing about the definition of the parts to be rated; there is no provision that they shall be described by metes and bounds, or by any special description. The section has been sufficiently followed by the precept. The levy has been made on the parts pointed out, and there is no reason why the overseers should not ascertain what those parts are. I have a clear opinion that the judgment of the Queen's Bench Division is right. With regard to the case of *Howell v. The London Dock Company* (1), I incline to agree with what was said by Erle, J., in *The Queen v. The Great Western Railway Company* (2), and I think that it cannot be cited as an authority of general application. There the Court was asked to deal with facts. A Court generally refuses to do so in such a case, but there it consented to do so. At all events it supplies us with no assistance in deciding the first question in this case. It might do so if we had to consider the second question, but as we have not to deal with that question we leave the case of *Howell v. The London Dock Company* (1) untouched.

COTTON, L.J.—We have only to consider one objection, and that is, that the precept is bad, because as is urged it leaves to the overseers a discretion which the district board ought itself to exercise. I do not think that the board has so delegated its duty. I think that it has exercised a discretion and given a direction, and all that has been left to the overseers to do was the duty of ascertaining to what part of the parish the description given in the precept applies. I think that the precept is a good precept; that it follows the

requirements of the statute; that the description of the parts to be rated at a lower rate is sufficient; and that this appeal must be dismissed.

*Judgment affirmed.*

Solicitors—Norton, Rose, Norton & Brewer, for appellants; S. Edwards, for respondents.

[IN THE QUEEN'S BENCH DIVISION.]

1879.  
Nov. 8, 15.  
Dec. 18.

THE QUEEN on the prosecution  
of the CHURCHWARDENS,  
ETC., OF ST. MARGARET  
AND ST. JOHN THE EVANGELIST,  
WESTMINSTER (respondents)  
v. THE INSTITUTION OF CIVIL ENGINEERS  
(appellants).

Poor Rate—Exemption from—6 & 7  
Vict. c. 36—Civil Engineers—Institution  
—Primary Object of Society—Purposes of  
Science, Literature and Fine Arts.

A society, known as "the Institution of Civil Engineers," was formed for the purpose of promoting the general advancement of mechanical science, and more particularly the acquisition of that species of knowledge which constitutes the profession of a civil engineer, being the art of directing the great sources of power in nature for the use and convenience of man, as the means of production and of traffic in states both for external and internal trade, as applied in the construction of roads, bridges, &c., and in the art of navigation by artificial power for the purpose of commerce and in the construction and adaptation of machinery, and in the drainage of cities and towns. The bye-laws and regulations of the society stated under the head of "Objects" that the institution was established for the general advancement of mechanical science, and more particularly for promoting the acquisition of that species of knowledge

*The Queen v. Institution of Civil Engineers, Q.B.*

which constitutes the profession of a civil engineer. The institution consisted of three classes, namely, members, associates, and honorary members, with a class of students attached, and papers were read at the institution on various subjects:—

Held, that the primary purpose of the institution was the edification and instruction of its members and students in sundry arts, with the view of enabling them the better to practise a particular profession, and consequently that such institution was not entitled to be exempted from rates under 6 & 7 Vict. c. 36, as a society established exclusively for the purposes of science, literature or the fine arts.

Upon appeal to the Quarter Sessions for Middlesex against a poor rate made by the above churchwardens overseers and vestrymen on the 16th day of April, 1877, in which the Institution of Civil Engineers were the appellants, and the said churchwardens overseers and vestrymen were the respondents, the Court confirmed the said rate with costs, subject to the following case.

In the year 1828 Thomas Telford, a Fellow of the Royal Societies of London and Edinburgh, and others, had formed themselves into a society for the general advancement of mechanical science, and more particularly for promoting the acquisition of that species of knowledge which constitutes the profession of a civil engineer, being the art of directing the great sources of power in nature for the use and convenience of man as the means of production and of traffic in states, both for external and internal trade, as applied in the construction of roads, bridges, aqueducts, canals, river navigation and docks for internal intercourse and exchange, and in the construction of ports, harbours, moles, breakwaters and lighthouses, and in the art of navigation by artificial power for the purpose of commerce, and in the construction and adaptation of machinery, and in the drainage of cities and towns.

The said society was by royal charter dated the 3rd of June, 1828, incorporated for the purpose aforesaid by the name of "The Institution of Civil Engineers."

Power is given to the members of the

said corporation by the said charter to hold general meetings, which are empowered to make and establish and from time to time alter, vary or revoke such bye-laws as they should deem to be useful and necessary for the regulation of the corporation, for the admission of members, for the management of the estates, goods and business of the corporation, and for fixing and determining the manner of electing the president and other officers.

By the bye-laws it is provided that under no pretence whatever shall the property and effects, or the income or revenue of the institution derived from the voluntary contributions of members or otherwise howsoever be applied in making any dividend, gift, division or bonus, unto or between any of the members, and the same is thereby expressly prohibited in conformity with the fundamental law and the therein alleged invariable practice of the institution as acted upon from its first establishment, and that therefore no proposition in contravention thereof shall be entertained by the council or by any meeting, whether general or special, of the members of the institution. In conformity with the bye-law the institution has not made and does not make any dividend, gift, division or bonus except any which may from this case appear to be so made unto or between any of its members.

Although the institution derives part of its yearly income from sums invested, yet it is substantially supported by the annual contributions of its members.

The appellants occupy the house and premises mentioned in the rates and valuation list, and hereinafter called "The Institution," for the transaction of their business and for carrying into effect their purposes.

The appellants maintain a library at the institution, consisting of works bearing upon the purposes of the institution as specified in the charter, and of works bearing upon science in general. They also maintain there a reading room, wherein periodicals of a similar character are provided for the use of members. The reading-room is also supplied with the *Times*, *Standard* and *Daily News*



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local rates, Land and Buildings occupied by Scientific or Literary Societies."

The appellants duly gave notice of appeal against the rate to General Quarter Sessions of the Peace for the county of Middlesex, on the ground that they were exempt from rateability by virtue of the above-mentioned Act 6 & 7 Vict. c. 36.

The appellants then contended that the Institution of Civil Engineers was a society instituted for purposes of science, literature or the fine arts exclusively, within the meaning of 6 & 7 Vict. c. 36, and was therefore exempt from being rated to the poor rate.

The respondents contended on the other hand that the said institution was not such a society within the meaning of the said Act, and that therefore the appellants' premises were rightly included in the said rate.

The Court decided that the institution was a society established for the acquisition of all that knowledge which may be useful to the persons practising in this country the profession of a civil engineer, and not exclusively for the promotion of scientific knowledge, and that its objects and pursuits were not such as to bring it within section 1 of the 6th & 7th Vict. c. 36, and entitle it to exemption; and the Court accordingly confirmed the said rate, subject to a case for the opinion of this Court (1).

The case having been brought up by *certiorari* and a rule *nisi* to quash having been obtained,

*Meadows White* and *Glen*, on behalf of the respondents, shewed cause.

(1) By 6 & 7 Vict. c. 36, s. 1. No person is liable to be rated in respect of any land, house or buildings "belonging to any society instituted for purposes of science, literature or the fine arts exclusively, either as tenant or owner, and occupied by it for the transaction of its business and for carrying into effect its purposes, provided that such society shall be supported wholly and in part by annual voluntary contributions, and shall not and by its laws may not make any distribution, gift, division or bonus in money unto or between any of its members."

*Sir Henry James* and *Poland* (*Mead with them*), for the appellants, supported the rule.

The following cases were cited during the argument, the nature of which sufficiently appears from the judgment of the Court:—*The Queen v. Brandt* (2), *The Queen v. Pocock* (3), *Ex parte The Overseers of Birmingham* (4), *The King v. Phillips* (5), *Scott v. The Churchwardens of St. Martin's* (6), *The King v. Cockburn* (7), *The Earl of Clarendon v. St. James's, Westminster* (8), *The Queen v. Gaskill* (9), *The Governors of the Russell Institution v. The Vestry of St. Giles* (10), *Purchas v. The Churchwardens, &c., of Holy Sepulchre, Cambridge* (11).

*Our. adv. vult.*

The judgment of the Court was (on Dec. 18) delivered as follows:—

FIELD, J.—This is a case stated by the Court of Quarter Sessions for the county of Middlesex, and the question asked of us by the Court is whether the appellants are entitled to claim exemption from the payment of their share of the money to be raised by local taxation on the ground that they are exempted from rateability by the operation of the Act of 6 & 7 Vict. c. 36, as a society instituted exclusively for the "purposes of science, literature or the fine arts," and whether the premises occupied by the appellants were, at the time of the rate, exclusively used for any of such purposes. Upon the argument, the numerous cases in which

(2) 16 Q.B. Rep. 462; 20 Law J. Rep. M.C. 119.

(3) 8 Q.B. Rep. 729; 15 Law J. Rep. M.C. 132.

(4) 10 Q.B. Rep. 868; 18 Law J. Rep. M.C. 89.

(5) 8 Q.B. Rep. 745; 17 Law J. Rep. M.C. 83.

(6) 5 E. & B. 858; 25 Law J. Rep. M.C. 42.

(7) 16 Q.B. Rep. 480; *sub nom. The Queen v. The Churchwardens, &c., of St. Martin's*, 21 Law J. Rep. M.C. 53.

(8) 10 Com. B. Rep. 806; 20 Law J. Rep. M.C. 213.

(9) 16 Q.B. Rep. 472; 21 Law J. Rep. M.C. 102.

(10) 3 E. & B. 416; 23 Law J. Rep. M.C. 65.

(11) 4 E. & B. 156; 24 Law J. Rep. M.C. 9.

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the statute relied upon has been the subject of judicial decision, were ably and succinctly brought before us, and although at the time of the argument I entertained very little doubt as to what my decision ought to be, I have considered it right to go carefully through the authorities before delivering my judgment. The result is to make the case, to my mind, a very plain one. The clear object of the Act, although, as has been observed, the language of it is not as definite as it might have been, is to encourage persons to associate together, and by voluntary subscriptions to raise a fund, by means of which, subjects of science, literature and the fine arts may be discussed and a knowledge of them widely diffused so as to extend and promote the general knowledge and refinement of society at large. Whether such a result should have been sought at the expense of a limited area of the body politic, rather than by imperial taxation, is not the question. The statute has said that such is to be the case, and we have only to construe its meaning. The object, however, of the enactment and its limitation exclusively to matters of science which may be useful or of advantage to the body politic at large, and not to the advantage or pleasure of any particular body or association, is shewn by the prohibition of any dividend or personal gain to the members of the society. It is further made clear when it is observed that whereas in dealing with purposes of science and literature, the language of the enactment is large enough to include all science and literature, whether abstract and pure, or applied to any particular object, yet in dealing with "art" which, without any addition, might mean either pure art, or an art or mystery, profession or handicraft, the Legislature adds the limitation "fine" to point out the limitation I have adverted to. In the case of "art," therefore, the limited object of the statute is clearly expressed, and so in the case of science and literature the same limitation ought to prevail. In the hands of the philosopher and man of science and literature, "science," although applied for the purposes of experiment and ad-

vancement of the general state of knowledge, is so applied without any material or substantial intention of advantage, or gain or of enjoyment by the individual, whereas "science" seems to me to cease to be science, within the meaning of the exemption, when it is acquired, communicated or made use of for the purpose of being applied or used for the individual object, advantage or gain of the members of the associated body. The "science" as applied by the manufacturer or engineer is, no doubt, still science generally, but is not science which the Legislature intended to exempt from local taxation. That this is so is, I think, clear upon principle, and the authorities cited, taken as a whole, bear out this view. No doubt it has been thought that the Court of Queen's Bench, in some of the earlier cases, carried the exemption at least to its furthest limits, but all the later cases are in favour of its stricter limitation. The application of the rule, therefore, becomes in each case a question of fact. What is the purpose of the institution claiming exemption? Is it instituted purely and exclusively for the purposes of "science," as I have defined it, or is it instituted primarily and substantially for the acquisition, enjoyment, advancement of or education in knowledge of the art or profession of the members composing the institution? It may be, perhaps, that the discussion of "science" in any shape is as productive of advantage to, as that of literature is of enjoyment by, the individuals who compose the institution. But if the advancement and acquisition of science taken generally is the main and substantial object of the association, then the necessary concomitant of advantage and enjoyment to the individual does not destroy the exemption. And, in like manner, if the primary and substantial purpose of the institution is the advantage and gain of a particular body of professional men, exercising a professional art by which to earn their livelihood, the fact that those objects are gained by the discussion and promotion of such science as if applied to their art will advance their individual and professional

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interests, will not protect the society from taxation. For the purpose of deciding under which head the institution in question must be ranged, I have carefully considered the terms of the charter and bye-laws, and the purposes for which these premises are used, and I cannot but come to the conclusion that neither the purpose nor the use is within the meaning of the Legislature as giving exemption. I find from the charter and bye-laws that it calls itself an institution of civil engineers, of the members and intending members of which profession it is substantially composed, and the slight admixture of persons other than members of that profession or their pupils, does not destroy that limitation and distinctive character. Again, I find that all the science and literature to which the charter refers converge upon one point—the education and advancement of its members in the particular professional art of a civil engineer, in which they are engaged, and by which they earn or are to earn their living. That this is the substantial purpose of the institution, as expounded by the charter and bye-laws, is shewn by the report of the council, which also shews the purposes for which they use the rateable hereditaments, for we find that, out of a gross income of upwards of 11,000*l.*, upwards of 5,000*l.* is devoted to the advancement of professional objects and interest. I might point out various other elements of the purposes for which the society's premises are used, which seem to me to tend in the same direction, and which lead me to the conclusion that the "science" for the diffusion of which the lectures and papers serve is ancillary and subordinate to the main professional object of the institution. There was, however, one particular use of the premises, namely, that of the committee of the Benevolent Association, a body which, almost admittedly, did not come within the exemption upon which I promised to express an opinion, if my decision in favour of the respondents rested upon it. But as my judgment has so much broader a scope, I prefer not to express an opinion upon it. The result, therefore, is, that I hold the institution not to be exempt,

and give judgment in favour of the respondent parish.

MANISTY, J.—The question in this case is whether the premises occupied by the Society of Civil Engineers in Great George Street, Westminster, are exempt from local rates.

The appellants contend that civil engineering is a science within the meaning of the 6 & 7 Vict. c. 36, and that the primary object of their institution is the advancement of that science, all else which they do being incidental and ancillary to that object, consequently they are exempt from rates for the relief of the poor.

The respondents contend, first, that whether civil engineering in the abstract be or be not a license within the meaning of the Act (which they deny), the primary object of the society is the instruction of its members in various subjects in which it is useful for them to be instructed, in order that they may be the better qualified to practise the profession of civil engineering.

Secondly, they contend, that assuming the appellants would otherwise be entitled to exemption, they are not so entitled because they permit a society or institution called the "Benevolent Fund of the Society of Civil Engineers" to meet and transact their business in the premises in question.

It is well settled by a number of authorities which were cited in the course of the argument that in deciding whether any particular society is within the Act, regard must be had to the primary purpose for which it was formed.

The Court of Quarter Sessions came to the conclusion upon the facts proved that the Institution of Civil Engineers is a society established "for the acquisition of all that knowledge which may be useful to persons practising in this country the profession of a civil engineer, and not exclusively for the promotion of scientific knowledge, and that its objects and pursuits were not such as to bring it within the Act and entitle it to exemption." In that conclusion I concur. So far as the question is one of fact it would be enough

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to say that there was evidence for the consideration of the justices, but I do not see how they could have properly come to any other conclusion either in fact or law, for the following reasons:—The purpose of the society is stated in their charter of incorporation to be for the general advancement of mechanical science, *and more particularly for promoting the acquisition of that species of knowledge which constitutes the profession of a civil engineer*, being the art of directing the great sources of power in nature for the use and convenience of man, as the means of production of traffic in states both for external and internal trade as applied in the construction of roads, bridges, aqueducts, canals, river navigation and docks for internal intercourse and exchange, and the construction of ports, harbours, moles, breakwaters and light-houses, and in the act of navigation by artificial power for the purposes of commerce, and in the construction and adaptation of machinery and in the drainage of cities and towns.

The bye-laws and regulations of the society state under the head of "Objects" that the institution was established for the general advancement of mechanical science, and more particularly for promoting the acquisition of that species of knowledge which constitutes the *profession* of a civil engineer.

Under the head of "Constitution," they state that "the Institution of Civil Engineers shall consist of three classes, namely, members, associates and honorary members with a *class of students* attached." Students are defined as "persons not under eighteen years of age, who are or have been pupils of members or associates of the institution, and who have the object or intention of becoming civil engineers."

Each student who resides within ten miles of the General Post Office pays 2 guineas, and each other student pays 1½ guineas per annum. The income derived from this source in the year 1877, was 800*l.*

The list of "subjects for papers" in the session, 1877-78, comprises fifty subjects, including—(3). The manufacture of cements, comprising the processes fol-

lowed in different countries; (4.) The manufacture of bricks by machinery; (9.) The construction of warehouses and other buildings to resist fire; (10.) The warming and ventilation of large buildings; (14.) The benefits and expedients of irrigation in India and in other warm climates; (37.) The manufacture of mineral oils, and the lamps best adapted for their consumption in dwellings and light-houses; (38.) The output of coal in the United Kingdom compared with that of other countries illustrated by statistics shewing where coal is produced, where and how it is consumed and the relative quantities exported. Several other subjects of a similar character will be found on reference to the list.

I am clearly of opinion that a society having for its primary purpose the edification and instruction of its members and students in sundry arts (more especially if they are not fine arts) with the view of enabling them the better to practise a particular profession, is not a society established exclusively for purposes of science, literature or the fine arts, within the meaning of the Act 6 & 7 Vict. c. 36.

That such is the primary purpose of the Institution of Civil Engineers, having regard to their charter and bye-laws as well as usage, I cannot doubt.

On this ground and for these reasons, I am of opinion that judgment must be given for the respondents, consequently it is unnecessary to say anything on the second point taken on their behalf.

*Judgment for respondents.*


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Solicitors—Hallowes, Price & Hallowes, for appellants; J. C. F. Warrington Rogers, for respondents.

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[CROWN CASE RESERVED.]

1880. }  
 March 6. } THE QUEEN v. CUMPTON.\*

*Warrant of Commitment—Backing of Warrant—Arrest by Constable—5 & 6 Will. 4. c. 76. ss. 76, 101—19 & 20 Vict. c. 69. s. 6.*

*O. was convicted of an assault on two police constables in the execution of their duty. The constables were members of the county police force of Worcestershire, and were apprehending O. in the city of Worcester under a warrant issued by two justices of the county of Worcestershire, for his commitment to prison for default in payment of a fine.*

*Worcester is a borough having a separate commission of the peace with exclusive jurisdiction and a separate police force. The warrant was not backed by any justice of the city of Worcester, and C. was not pursued from the county, but found in the city:—*

*Held, that the conviction was wrong, because the constables were not acting in the execution of their duty in so executing such warrant.*

CASE reserved by the Recorder of Worcester:—The prisoner was indicted at the Quarter Sessions for the city of Worcester on a charge of assaulting two police constables in the execution of their duty. He was also charged with a common assault. He was convicted on both charges. The question reserved was whether the conviction on the first charge could be supported.

The assault as to which the question arose was committed on two police constables of the county police force of Worcestershire, who were apprehending the prisoner within the city of Worcester, under a warrant issued by two county justices for his commitment to prison for default in payment of a fine. Worcester is a city and county, having a separate commission of the peace, with exclusive jurisdiction and a separate police force. The warrant was not backed by any city justice. The prisoner was not pursued

from the county of Worcestershire, but found in the city.

It was contended for the prisoner that the constables had no authority to arrest him within the city, and were therefore not assaulted in the execution of their duty.

The question for the opinion of the Court was whether the conviction on the charge of assaulting the police in the execution of their duty was supported by the facts.

*J. J. Powell (Patrick Evans with him), for the prisoner.*—Previous to the Municipal Corporations Act, Worcester was governed by a charter granted by King James I., which declared that thereafter Worcester should be a county of itself, and no parcel of the county of Worcester.

[LORD COLERIDGE.—It is also a borough specified in schedule A. of the Municipal Corporations Act, 1835 (5 & 6 Will. 4. c. 76), to which therefore by sec. 1 of that statute certain provisions of the Act apply, notwithstanding any previous charter.]

The prosecution rely on 19 & 20 Vict. c. 69. s. 6, which enacts that county constables shall have in every borough situate wholly or in part within such county, or within any county in which they have authority, all such powers and privileges, and be liable to all such duties and responsibilities as the constables appointed for such borough have and are liable to within any such county. That enactment does not apply, because Worcester is a separate county, not a borough situate in Worcestershire.

If, however, that section does apply, and Worcester is to be treated as a borough, it only gives Worcestershire county constables the same powers in Worcester that Worcester borough constables have in Worcestershire. The powers of borough constables, as defined by 5 & 6 Will. 4. c. 76. ss. 76, 101, do not extend to executing warrants of commitment in the county. The county justices have no jurisdiction within the borough of Worcester, and their warrant unbacked does not run there. 5 & 6 Will. 4. c. 76. s. 111, enacts that no part of any borough in and for which a separ-

\* *Coram* Lord Coleridge, C.J.; Grove, J.; Pollock, B.; Field, J.; and Stephen, J.

*The Queen v. Cumpton, C.C.R.*

ate Court of Quarter Sessions shall be holden, shall be within the jurisdiction of the justices of any county from which such borough was exempt before that Act. And moreover by Jervis's Acts (11 & 12 Vict. c. 42. s. 11, and 11 & 12 Vict. c. 43. s. 3), warrants of commitment must be backed before being served outside the jurisdiction of the justices issuing such warrants.

*H. Matthews (R. H. Amphlett with him)*, for the prosecution, was requested by the Court to confine his argument to the point whether a warrant of commitment can be executed in a borough without the authority of a borough justice.

*H. Matthews.*—At Common Law the parish constable was the proper officer to enforce warrants, and his jurisdiction was limited to the parish. He was not bound to go out of his parish, *Case of the Village of Othorley* (1), but if the warrant was directed to him by name he might execute it in any place in which such warrant ran.

The warrant issued in this case was a proper and lawful command to arrest the defendant, who was an offender against the peace within the meaning of 5 & 6 Will. 4. c. 76. s. 76. By 5 & 6 Will. 4. c. 76. s. 76, borough constables are to apprehend offenders against the peace within the county in which the borough is situate, and to have all the powers and duties of constables at common law within their constablewick within such county, and to obey all lawful commands of justices having jurisdiction within any county in which they shall be called on to act as constables. Therefore a Worcester borough constable might execute a warrant of commitment in the county. If so, then 19 & 20 Vict. c. 69. s. 6, which gives county constables the same powers in boroughs within the county as borough constables have in such county, renders it lawful for a warrant to be executed by a county constable in the borough.

Section 101 of 5 & 6 Will. 4. c. 76, deals only with four documents, and empowers borough justices to order them

to be executed in the county. Such documents are all precedent to the order or conviction, therefore section 101 does not, as to warrants of commitment, cut down the effect of section 76.

It is perfectly reasonable for the Legislature to have drawn a distinction between a warrant to apprehend on a charge and a warrant to commit to gaol after a conviction, and to have given a greater latitude for the service of warrants of commitment than for other warrants. On the other hand it would be absurd to place a warrant of commitment in a less advantageous position than a warrant of apprehension, which would be the result of giving effect to the defendant's contention.

*LORD COLERIDGE, C.J.*—The question reserved in this case is purely one of jurisdiction.

Now it is the fact that Worcester is a borough and also a county of a city, and it was contended that something turned upon the peculiar constitution of Worcester, it being a county of a city. We, however, think that nothing does turn upon such fact, and our judgment is based upon a statute which makes no difference between counties of cities and other boroughs.

It was argued on behalf of the appellant that, inasmuch as the constables were county constables acting under the authority of county justices, it could not be said that they were acting in obedience to the lawful commands of any of the justices of the peace having jurisdiction in the borough under section 6 of the 19 & 20 Vict. c. 69. the borough of Worcester not being within the county of Worcester, and having a jurisdiction of its own.

On behalf of the prosecution it was argued that Worcester is a borough situated within the county of Worcestershire, and therefore the county constables have, under that section, the same powers as the constables for the borough, and have the same right to execute the warrant in the borough of Worcester as they would undoubtedly have in the county. Even if that section stood alone I think it would be doubtful whether the

*The Queen v. Cumpston, C.C.R.*

execution of a warrant of commitment issued by a justice not having authority within the jurisdiction where it was to be executed, came within the "powers and privileges" or "duties and responsibilities" mentioned in the section referred to; but when we look at the provisions of this section as expounded by the Municipal Corporations Act (5 & 6 Will. 4. c. 76) the matter becomes quite clear. The section in question is, in its affirmative provisions, the same, *mutatis mutandis*, as section 76 of the Municipal Corporations Act, but section 101 of that Act provides that the borough police may execute certain specified orders beyond the jurisdiction of the person issuing them, although not "backed." It is admitted that a warrant of commitment is not one of the orders specified in that section. By inference the police have no power to execute unbacked warrants outside their jurisdiction in cases other than those specified, and the warrant in this case is therefore not one which the borough justices could authorise the borough police to execute in the county. Now it is admitted that the later Act only empowers the county justices to authorise the execution within the borough of such process, as the borough justices could authorise the execution of it within the county. Therefore in this case the constables were not acting in the execution of their duty, and the conviction must be quashed.

GROVE, J.—I think this conviction cannot be sustained without unduly straining the words of the statutes. This warrant is clearly not one of those specified in section 101, for the prisoner cannot be said to be a person "charged with any offence," nor is that section in any way enlarged by section 76, which relates to the duties of constables only.

POLLOCK, B.—I think that it would be impossible to affirm this conviction without disregarding all the sound rules which should guide the Court in the construction of statutes. I think that section 76 is intended to define the protection to which the constable is entitled in the discharge of his duties, and does not relate to the manner in which he is to carry out a lawful command, such as the

execution of a warrant. Section 76 being then silent on this point, we find section 101 expressly dealing with cases where the duties of constables in the execution of certain specified warrants are pointed out; and it being admitted that this warrant is not one of those specified in section 101, I think the conviction must be quashed.

FIELD, J.—I am of the same opinion. In this case it lies on the prosecution to make out that the constable has the power contended for, and in this I think they have failed. In my opinion section 76 relates rather to the *status* of the constable than to the question of jurisdiction; while the particular warrant in this case does not bring it within section 101, for the prisoner cannot be said to be a person "charged with any offence."

STEPHEN, J.—I have come to the same opinion, though not without considerable regret and doubt. I will only add one observation to what has been said, and that is as to section 76. The effect of section 76 seems to me to be this, that the borough constables are to have within certain enlarged local limits all the powers and duties of other constables, and that within the same limits they are to obey all the lawful commands they may receive, but it does not shew what the conditions are which render such commands lawful. To find out what they are we have to look at section 101 and the enactments as to backing warrants in Jervis's Acts. The effect of which is, that if warrants are to be executed outside the jurisdiction of the justices issuing them they must be backed, except in the cases enumerated in section 101. This case is not one of those enumerated; therefore the general rule applies, and the warrant not having been backed is void.

*Conviction quashed.*

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Solicitors—Bolton, Robbins and Busk, agents for Curtler & Davis, Worcester, for the prosecution; Church, Sons & Clarke, agents for Southall, Worcester, for prisoner.

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[CROWN CASE RESERVED.]

1880. }  
Feb. 28. } THE QUEEN v. CRAMP.\*

*Abortion, Attempt to procure—Noxious Thing—24 & 25 Vict. c. 100. ss. 58, 59.*

A “noxious thing” within 24 & 25 Vict. c. 100, ss. 58, 59, means anything which is harmful as administered, although not necessarily harmful per se.

The prisoner, with intent to procure miscarriage, gave V. an ounce bottle of oil of juniper, telling her to take it in two doses of half an ounce each. She took one such dose, which caused violent sickness. There was evidence that the bottle given by the prisoner contained 500 to 600 drops of oil of juniper; that oil of juniper in small quantities of from five to twenty drops is commonly used without any bad effect as a diuretic, but that taken in a dose of half an ounce it acts as a powerful stimulant and irritant, and produces violent purging and vomiting, which would have a tendency to produce miscarriage by reason of the shock to the system and the straining of the parts consequent upon the purging or vomiting; and that a dose of half an ounce of oil of juniper would be a very dangerous dose to administer to a pregnant woman, and that such danger would consist in the high probability of its causing miscarriage:—

Held, that there was evidence that the half ounce of oil of juniper was a “noxious thing” within the meaning of the section.

CASE reserved by Denman, J.

The prisoner was tried and convicted on an indictment, which alleged that he “feloniously and unlawfully did cause to be taken by one Ellen Elizabeth Verrall a certain noxious thing, to wit a large quantity, to wit half an ounce of oil of juniper, with intent feloniously to procure the miscarriage of the said Ellen Elizabeth Verrall, against the form of the statute, &c.”

The statute referred to is the 24 & 25 Vict. c. 100. s. 58 (1).

\* *Coram* Coleridge, C.J.; Denman, J.; Pollock, B.; Field, J.; and Stephen, J.

(1) 24 & 25 Vict. c. 100. s. 58:—“... whosoever with intent to procure the miscarriage of any woman, whether she be or be not with child, shall unlawfully administer to her or cause to be taken

It was proved that the prisoner did, with intent to procure the miscarriage of Verrall, who was with child by him, give her an ounce bottle full of oil of juniper, and tell her that she must take it, half of it at a time, in two doses. She accordingly, on the following morning, took half the contents of the bottle, which caused violent sickness, of which she informed the prisoner, who told her not to mention that he had given it, or he might be transported, and said that she would not now have a child. She did not, in fact, miscarry, but was with child at the time of the trial.

There was evidence that the bottle given by the prisoner contained 500 to 600 drops of oil of juniper, that oil of juniper in small quantities of from five to twenty drops is commonly used without any bad effects as a diuretic and otherwise; but that taken in a dose of half an ounce, it acts as a powerful stimulant and irritant, and produces violent purging and vomiting, which would have a tendency to produce miscarriage by reason of the shock to the system and the straining of the parts consequent upon the purging or vomiting; and that a dose of half an ounce of oil of juniper would be a very dangerous dose to administer to a pregnant woman, but the danger would consist in the high probability of its causing miscarriage, which is always more or less dangerous to a woman, and not in the probability of any mischief of any other kind.

It was contended for the prisoner that there was no evidence of the prisoner having caused “a noxious thing” within the meaning of the statute to be taken, as evidence only shewed that oil of juniper would be noxious when taken in excess. The learned Judge told the jury that if they were satisfied that the prisoner had given the prosecutrix the full ounce bottle of oil of juniper, and told her to take half with the intent of causing her to miscarry, and if they thought that such a dose of oil of juniper was a noxious thing, as being calculated to injure the health of the prosecutrix by

by her any poison or other noxious thing . . . shall be guilty of felony.”

*The Queen v. Cramp, C.C.R.*

causing her to miscarry, they might find him guilty, which they did.

*D. Kingsford (F. Mead with him)*, for the prisoner.—The question to be decided is, what is the meaning of the words "noxious thing" in section 58 of the Act? They mean something *ejusdem generis* with poison, and are merely words of description. In *The Queen v. Isaacs* (2), Pollock, C.B., said: "We are all of opinion that the thing intended by the statute must be noxious in its nature." *The Queen v. Hennah* (3); *The Queen v. Blakeman* (4); and *The Queen v. Perry* (5), were also cited.

*A. B. Kelly*, for the prosecution, was not called upon.

LORD COLERIDGE, C.J.—The case is within the statute, and therefore the conviction ought to be affirmed. The intent with which the oil of juniper was given was proved, and also that it was noxious as administered. A poison is defined to be that which when administered is injurious to health or life. Some things administered in small quantities are beneficial, which, when administered in large quantities, are noxious. In the present case the oil of juniper as administered was noxious.

In the case of *The Queen v. Isaacs* (2) the drug was not shewn to be capable of doing harm. In *The Queen v. Perry* (5) and *The Queen v. Hennah* (3) the things taken were not noxious in the form taken.

DENMAN, J., and POLLOCK, B., concurred.

FIELD, J.—The statute speaks, first of poisons; secondly, of other things. If the thing administered is a recognised poison the offence may be committed, though the quantity given is so small as to be incapable of doing harm. In the present case the thing administered was such an amount of oil of juniper as was proved to be noxious. It was, therefore, a "noxious thing" within the meaning of the statute.

STEPHEN, J.—This case stands on the

(2) L. & C. 220; 32 Law J. Rep. M.C. 52.

(3) 13 Cox 547.

(4) 12 Cox 463.

(5) 2 Cox 223.

same principle as *The Queen v. Hennah* (3). With regard to the meaning of the term "poison" there are certain things which have acquired the name of poisons, and as to these possibly, if a small quantity only were administered, the administration might come within the statute.

*Conviction affirmed.*

Solicitors—Cripps & Son, Tunbridge Wells, for prosecution; De Jersey, Micklem & Son, agents for J. G. Langham, Uckfield, for prisoner.

[CROWN CASE RESERVED.]

1880. }  
Feb. 28. } THE QUEEN v. BISHOP.\*

*Lunatics—Reception of Lunatics in an Unlicensed House—Honest Belief*—8 & 9 Vict. c. 100. s. 44.

8 & 9 Vict. c. 100. s. 44 makes it an offence for any person to receive two or more lunatics into any house, unless such house shall be an asylum or hospital registered under the Act or a house duly licensed under the Act.

Held, that to constitute such an offence, knowledge or absence of knowledge of the person receiving lunatics as to their lunacy is immaterial.

The defendant was convicted under such Act, but it was specially found by the jury that though the persons so received were lunatic, the defendant honestly, and on reasonable grounds, believed that they were not lunatic.

Held, that such belief was immaterial and that the conviction was right.

CASE reserved by Stephen, J.

The defendant was tried on an indictment charging her with an offence against the 44th section of 8 & 9 Vict. c. 100 (1), by receiving into her house

\* *Coram* Lord Coleridge, C.J.; Denman, J.; Pollock, B.; Field, J.; and Stephen, J.

(1) " . . . it shall not be lawful for any person to receive two or more lunatics into any house, unless such house shall be an asylum or an hospital registered under this Act, or house for the time being, duly licensed under this Act, or one of the Acts hereinbefore repealed; and any person who shall receive two or more lunatics into

*The Queen v. Bishop, C.C.R.*

two or more lunatics, such house not being an asylum or hospital registered under the Act or a house duly licensed under the Act.

It was proved on the trial that the defendant received into her house several young women, for the purpose of medical treatment. Her stepdaughter, who was called as a witness on her behalf and who took part in the management of the house, described them as patients suffering from "hysteria, nervousness and perverseness," and it was proved that she advertised in newspapers for patients so described. She had, besides these patients, one inmate, who was admitted to be a lunatic, with regard to whom she had complied with the requisitions of section 90 of the same Act.

There was conflicting evidence upon the question whether any of the other patients were lunatics or not, and as to the nature and degree of restraint to which they were subjected, and there was strong evidence to shew that the defendant believed in good faith and on reasonable grounds that no one of them was a lunatic, but that they were all suffering only under hysteria, nervousness or perverseness.

The learned Judge read to the jury the interpretation of "lunatic" given in section 114: "Lunatic shall mean every insane person and every person being an idiot or lunatic or of unsound mind," and told them that in his opinion these words would include every one whose mind was so affected by disease that it was necessary, for his own good, to put him under restraint.

The learned Judge also told them that in his opinion the words "receive one or more lunatics," meant, "receive as lunatics, and in order to be treated as lunatics are treated in asylums," and he gave them this direction: "In order that the defendant may be convicted, the jury must be of opinion that at least one other patient in the house besides the admitted lunatic, was either an insane person or an idiot or a lunatic or of unsound mind

any house other than a house for the time being duly licensed as aforesaid, or an asylum or an hospital duly registered under this Act, shall be guilty of a misdemeanour."

when received; and that such person was received into the house to be treated as a lunatic is treated in an asylum."

The learned Judge further told them that he was of opinion, that if one other such person, besides the admitted lunatic, was so received, an honest belief on the part of the defendant that that person was not a lunatic, would be immaterial, but at the request of the counsel for the defendant he asked them, if they convicted the defendant, to find specially whether she believed honestly and on reasonable grounds that any person so received was not a lunatic.

The jury found the defendant guilty, but they found that she did honestly and on reasonable grounds believe that no one of her patients was a lunatic (except, of course, the admitted lunatic).

The learned Judge directed the defendant to enter into her own recognisances to come up for judgment if called upon, in order that she might have an opportunity of complying with the provisions of the Act, but he reserved for the determination of the Court for Crown Cases Reserved, the question whether his direction to the jury was right, in order that if it was wrong the conviction might be set aside.

No counsel appeared for the defendant.

*Mellor and R. Harris*, for the prosecution.—The jury found that the defendant did receive more than one lunatic into her house to be treated as a lunatic was treated in an asylum. It is immaterial whether the defendant did or did not know that the persons she so received were lunatics. Knowledge is not an ingredient of the offence. The object of the Act was to prevent persons of doubtful sanity being received into any but licensed houses. The object of licensing houses is that a system of restraint shall not be applied without the knowledge of the Commissioners in Lunacy.

LOED COLERIDGE.—We are precluded by the finding of the jury from considering what evidence there was that the persons so received by the defendant were lunatics. Very grave and serious consequences might arise if every person

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who was hysterical and nervous, and who might very properly be taken care of, were to be considered a lunatic. It must therefore be understood that the judgment we pronounce is simply and solely on the question whether knowledge of the fact was an ingredient in the case. I am of opinion it was not, and, therefore, that the conviction was right.

DENMAN, J., concurred.

POLLOCK, B.—I also agree that in this case the conviction ought to be sustained, and I wish it to be thoroughly understood that we affirm the direction of my brother Stephen, when he told the jury that the word "lunatic" would include every one whose mind was so affected by disease that it was necessary for his own good to put him under restraint," in the sense that by "restraint" is meant restraint *ejusdem generis* with that applied to lunatics in asylums. With regard to the point whether the knowledge, or absence of knowledge, of the keeper is material, I am clearly of opinion it is not.

FIELD, J., concurred.

STEPHEN, J.—I am of the same opinion.—I may say upon the mere question whether knowledge on the part of the defendant is essential to the offence under this Act I entertained no doubt at the trial, and I certainly do not now, and for the reasons which have been stated. I reserved the point because I understood that the Commissioners in Lunacy considered the case as one of great importance, and that they wished to obtain as solemn a judicial decision on the meaning of the Act as could be had. With regard to what has been referred to as my definition of a lunatic, I may say I do not think, upon reflection, that the case which I submitted contained quite as much as it ought to have done of what I said to the jury on the subject. I read to them the interpretation of lunatic given in section 114, and I then told them that in my opinion those words were sufficiently wide to include every person who was, by reason of mental disease, in such a condition that it was necessary, or advisable at any rate, for his or her own good, to subject him or her to the restraint of a lunatic asylum.

I added that that was said not by way of a legal definition, which bound them, it was not a positive direction to them, but that upon the whole it was the best construction which I could place upon the words of the Act, which are very general indeed; because it says that "lunatic" shall mean every insane person, and every person being an idiot or lunatic or of unsound mind.

In other words, "lunatic" shall mean not only lunatic, but insane and idiot, and a person of unsound mind; and I said that I thought that if there was any difference between a lunatic and an insane person and a person of unsound mind, persons of unsound mind, not being lunatics, must be persons whom it was necessary for their own good to subject to that kind of restraint, which is exercised in lunatic asylums over persons afflicted with lunacy.

*Conviction affirmed.*

Solicitor—Vandercom, Law & Hardy, for the prosecution.

[IN THE QUEEN'S BENCH DIVISION.]

1880. } WILLIAMS AND ANOTHER (appellants) v. ELLIS (respondent).  
Feb. 19. }

*Turnpike Toll—Carriage drawn by Steam or other Power—Bicycle.*

*A private Act (3 Will. 4. c. lv.) imposed a toll of 5s. on every carriage of whatever description, drawn, impelled or set in motion by steam or by any other power or agency, than being drawn by horses or beasts of draught:—Held, that a bicycle was not a "carriage" within the meaning of the Act, which was clearly intended to apply only to carriages impelled by mechanical power.*

*Taylor v. Goodwin* (48 Law J. Rep. M.C. 104), distinguished.

CASE stated under 20 & 21 Vict. c. 43.

At a petty sessions of the peace holden in and for the division of Gloucester, in the county of Gloucester, on the 23rd of August, 1879, the appellants were convicted of having, on the 12th of August, 1879, as collectors of tolls at a certain

*Williams v. Ellis, Q.B.*

turnpike gate, unlawfully demanded and taken from the respondent the sum of 5s. for the toll of a bicycle, on which he was then riding and which was exempt from toll, by reason of such bicycle not being a carriage, in respect of which toll was authorised to be demanded and taken.

At the hearing of the information it was proved on the part of the respondent that on the 12th of August, 1879, he drove a bicycle on the Over turnpike road in the county of Gloucester, through the toll gate there situate, kept by the appellants, and that the latter demanded of him the sum of 5s., as and for the toll for the said bicycle, which the respondent refused to pay; that the appellants then detained the bicycle.

It was admitted by the appellants that the tolls to be taken at the said turnpike gate were prescribed by the Local Act (3 Will. 4. c. lv.), and were as follows:—

“For every horse, mule or other beast drawing any coach, sociable, chariot, berlin, landau, vis-a-vis, phaeton, curricule, calash, chaise, chair, gig, whiskey, caravan, hearse, litter or other such carriage, the sum of 6d.

“For every horse, mule or ass laden or unladen and not drawing, the sum of 1½d.; and

“For every carriage of whatever description and for whatever purpose, which shall be drawn or impelled or set or kept in motion by steam or any other power or agency, than being drawn by any horse and horses or other beast or beasts of draught, the sum of 5s.”

The justices adjudged the toll to be illegal, and fined the appellants with costs, but stated the above case for the opinion of the Court.

*A. P. Stone*, for the appellants.—A bicycle is a carriage drawn or impelled and kept in motion by a power or agency other than horse power, and was, therefore, liable to the toll demanded by the appellants. He cited *Taylor v. Godwin* (1).

*W. A. Raikes*, for the respondent, was not called upon to argue.

(1) 48 Law J. Rep. M.C. 104; Law Rep. 4 Q.B. D. 228.

*LUSH, J.*—I think that the decision which the justices arrived at in this case was perfectly right, and that the word carriage in the statute does not include a bicycle. The words, no doubt, are very general, but in order to determine the question raised before us we must look at the object of the statute and the purpose for which it was passed. In *Taylor v. Godwin* (1), for instance, it was properly held that a bicycle was a carriage within 5 & 6 Will. 4. c. 50. s. 78, which was a section manifestly inserted to protect the public from being injured by furious driving. But it by no means follows that because it has been held that a bicycle is a “carriage” within the meaning of the statute I have just referred to, it is necessarily also a “carriage” within a section of a statute which deals with the amount of toll payable for the use of a road. I think that the term “carriage” as used in the latter part of the clause of the Local Act was intended to apply only to carriages of a heavy description which both wear the road and are impelled by some mechanical power. A bicycle is in my opinion no more a “carriage” within the meaning of that portion of the Local Act which has been relied upon, than a wheelbarrow or a perambulator would be. It would be absurd, indeed, to hold that the latter were liable to pay a toll of 5s., while a carriage drawn by a horse would admittedly only have to pay 6d.

*BOWEN, J.*—I am of the same opinion, and for the same reasons.

*Judgment for respondent.*

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Solicitors—Milne, Riddle & Mellor, for appellants; Morley & Shirreff, agents for Jones & Co., Gloucester, for respondent.

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[IN THE QUEEN'S BENCH DIVISION.]

1880. { THE QUEEN (*on the appli-*  
March 20. { *cation of the Vestry of St.*  
                  *Mary, Islington*) *v.* PRICE.

*Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49)—Court of Summary Jurisdiction—Proceedings for the Recovery of Poor Rates—Distress Warrant.*

*A justice of the peace sitting to issue a warrant of distress for the recovery of poor rates is not a Court of summary jurisdiction within the meaning of the Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49), and the provisions contained in that statute in no way affect or apply to proceedings for the recovery of poor rates.*

In this case a rule *nisi* had been obtained for a writ of *mandamus* directed to Mr. John Blant Price, justice for the county of Middlesex, calling upon him to shew cause why he should not issue his warrants of distress for the levying of certain poor rates.

The material facts were as follows:—

Three ratepayers of the parish of St. Mary, Islington, had refused or neglected to pay certain instalments of rates exceeding in each case the sum of 20s., to which they were properly assessed, which rates were made on the 1st of August, 1879, but not demanded until subsequent to the 1st of January, 1880. Accordingly on the 28th of February, 1880, a complaint was made upon oath against them by the collector pursuant to the provisions contained in the Islington Local Act (20 & 21 Vict. c. cxviii.) under which proceedings for the recovery of rates have always been taken. The summonses were duly issued by a justice commanding them to appear on the 10th of March, 1880, to answer the complaint, but they severally refused or neglected to do so. Thereupon after proof of the service of the summonses and non-payment of the rates due and demanded, application was made to the said John Blant Price to grant warrants of distress pursuant to the provisions contained in section 14 of the local Act (20 & 21 Vict. c. cxviii.) by which it is enacted that "in all cases where such rate and assessment shall not be paid before

the return of such summons, it shall be lawful for the police magistrate or justice who shall have signed and issued such summons, or who shall have directed such summons to be signed and issued as aforesaid, or for any other police magistrate, or justice of the peace for the said county, and he is hereby authorised and required upon oath made before him of the due service of such summons by the person who shall have served the same, and proof on oath that such rate or assessment is actually due and owing, to grant a warrant under his hand and seal, authorising or directing any such person appointed to collect such rate or assessment, or any constable or other person as aforesaid to levy such rate or assessment, and all arrears thereof, &c., by distress of the goods and chattels of the person so neglecting or refusing."

The said John Blant Price refused to grant the warrants upon the ground that such several sums having been demanded since January 1, 1880, and each of such sums exceeding in amount the sum of 20s. respectively, he had no power to make an order for the payment of the said sums or adjudicate upon the application for the issue of either of such warrants by reason of the provisions contained in the Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49).

A rule *nisi* for a writ of *mandamus* was obtained on March 15, 1880, on behalf of the vestry of St. Mary, Islington, against which

*Poland* shewed cause. The provisions contained in the local Act are almost identical with those contained in a general Act (12 Vict. c. 14), and the question is whether the ordinary process by warrant of distress for non-payment of rates is still in existence, or whether the old system of procedure has been superseded by the Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49). The magistrate was of opinion that his jurisdiction to deal with these rating matters was taken away by 42 & 43 Vict. c. 49. Before that statute came into operation the practice relating to the recovery of the poor rate was clear. The poor rate being allowed by the justices, the

*The Queen v. Price, Q.B.*

summons was issued in the usual way, calling upon the ratepayer who had not paid to shew cause why he had neglected or refused to pay the rate. Upon the return of the summons, the rate being allowed by the justices and being good in form, the liability accrued unless good cause was shewn to the contrary. The justices could not go behind the rate, that being purely a matter of appeal, but there are certain matters which it is submitted he would have to determine, as for instance when a man denied that he was the occupier.

[COCKBURN, C.J.—If not the occupier, that would be a matter entering into the rate. Is not the jurisdiction limited to the identity of the person?]

It is submitted that the magistrate's duty is not purely ministerial, but is to some extent judicial. The matter was originally regulated by 43 Eliz. c. 2. s. 4, which gave power to the justice to issue a writ of distress against the offender's goods and chattels if he had not paid the rate, and in default of distress, imprisonment until payment. Then, by 12 Vict. c. 14. s. 2, the period of imprisonment for non-payment of a poor-rate is limited to three calendar months. In the schedule to the statute the form of complaint is given, and then a form of summons, and then a form of the distress warrant. There is no order made by the magistrate to pay the rate, but it is in the nature of an execution. The rate is the order, the summons is simply a complaint that the money has not been paid, and then a distress warrant issues by way of execution—see *Sweetman v. Guest* (1). Although in the case of poor-rates there is no order of magistrates, under the Public Health Act (38 & 39 Vict. c. 55), s. 256, in respect of general rates made under that Act, the magistrate, on non-payment, is to make an order for the payment of the money. It is necessary, in construing the provisions contained in the Summary Jurisdiction Act, 1879, to bear in mind that there are some rates in respect of which the magistrate is to make an order for the payment of the rate; others, as non-

(1) 37 Law J. Rep. M.C. 59; Law Rep. 3 Q.B. 862.

payment of the poor-rate, where he has to issue a warrant of distress for execution without any order. Under the Summary Jurisdiction Act, 1879, s. 6, "where under any Act, whether past or future, a sum claimed to be due is recoverable on complaint to a Court of summary jurisdiction, and not on information, such sum shall be deemed to be a civil debt, and if recovered before a Court of summary jurisdiction, shall be recovered in the manner in which a sum declared by this Act to be a civil debt, recovered summarily, is recoverable under this Act, and not otherwise." With reference to this section it will not be disputed that a rate is "recoverable on complaint, and not on information. Then, by section 47, "the provisions of this Act with respect to a sum adjudged to be paid by an order shall apply, as far as circumstances admit, to a sum in respect of which a Court of summary jurisdiction can issue a warrant of distress without an information or complaint under the Summary Jurisdiction Act, 1848, in like manner as if the said sum was a civil debt," &c.

[LUSH, J.—To bring the case within the 47th section it must be shewn that the warrant of distress could issue under Jervis's Act; unless, therefore, it be shewn that Jervis's Act applies to warrants of distress for poor-rates, how is it brought within section 47?]

The first forty-six sections have been dealing with two things—first, orders for the payment of money; second, cases where there have been conviction and fines. Then, having dealt with those cases up to section 46, the Legislature intended by section 47 to apply the Act to all cases which had not been dealt with before. Application for a distress warrant for non-payment of a poor-rate is an application to a justice to issue a distress warrant without information or complaint under the Summary Jurisdiction Act.

[LUSH, J.—Jervis's Act had nothing to do with poor-rates, which were dealt with by a later Act, 12 & 13 Vict. c. 14.]

He also referred to 42 & 43 Vict. sections 20, 35; and section 50.

*The Solicitor-General (Sir H. Giffard),*

*The Queen v. Price, Q.B.*

*Sir Henry James, and Lush Wilson, in support of the rule, were not heard.*

COCKBURN, C.J.—I confess I think this case is not arguable. The 47th section presupposes that the matter is something in which a Court of summary jurisdiction, as defined by section 50, can issue a warrant of distress without an information or complaint. It refers to a Court of summary jurisdiction. Now it is not *qua* a Court of summary jurisdiction that the magistrates grant a distress warrant in the case of a poor-rate. Jervis's Act regulated the procedure in cases in which justices were sitting and acting judicially as a Court of summary jurisdiction. The 47th section refers to the issue of warrants of distress by a Court of summary jurisdiction under Jervis's Act. Now this is not a case in which a Court of summary jurisdiction, under Jervis's Act, could issue a distress warrant; it is not competent to them to do so; it is not within their jurisdiction. The jurisdiction is that of a magistrate sitting, not as a Court of summary jurisdiction, but as a simple justice. The obligation and power to issue a distress warrant under the circumstances were quite independent of Jervis's Act, and come under the statute of Elizabeth. Therefore, inasmuch as the 47th section, in absolute, positive and unmistakeable terms, applies to cases in which the warrant is issuable under Jervis's Acts, and as the warrant of distress for the poor-rate is not issuable under Jervis's Act, it is as clear as possible that the 47th section does not apply. The same observations apply to the 6th section; the money has been made recoverable practically by the making of the rate; it is not recoverable through an order of a Court of summary jurisdiction, but through a distress warrant. The rule had better be drawn up in the form of an order under Jervis's Act, instead of for a *mandamus*.

LUSH, J., and BOWEN, J., concurred.

*Rule accordingly.*

Solicitors—John Layton, for applicants; W. T. Ricketts, for respondents.

[IN THE QUEEN'S BENCH DIVISION.]

1878. { DE MORGAN (*appellant*) v.  
Feb. 25, 28. { THE METROPOLITAN BOARD  
OF WORKS (*respondents*).

*Common—Metropolitan Commons Supplemental Act, 1877—Validity of Bye-laws—Right of Public Meeting—Common dedicated to Use and Recreation of Public.*

*A common was by Act of Parliament dedicated to the use and recreation of the public, and directed to be regulated and managed by the Metropolitan Board of Works, who were empowered to frame bye-laws and regulations for, among other things, the preservation of order on the common. A bye-law made under this power prohibited the delivery of any public speech, lecture, sermon or address of any kind, except with the written permission of the Board first obtained, and upon such portions of the common and at such times as might by such written permission be directed and sanctioned by the board:—*

*Held, that the bye-law was valid, not being ultra vires as repugnant to the laws of England or the intention of the particular Act, and that it was a reasonable mode of regulating the user of the common to require previous information of the object and character of any meeting proposed to be held thereon.*

This was a case stated by a metropolitan police magistrate under 20 & 21 Vict. c. 43.

On the 30th of July, 1879, the appellant appeared in answer to a summons at the instance of the Metropolitan Board of Works, charging that he did, on the 29th of June, 1879, unlawfully deliver a sermon or address on Clapham Common without having first obtained the written permission of the board to do so, contrary to the bye-laws made by the board under the powers of the Metropolitan Commons Supplemental Act, 1877.

The bye-law in question was made under the second schedule attached to the Act, Article No. 5:—"The Board shall frame bye-laws and regulations for the prevention of nuisances and the preservation of order on the common."

The appellant admitted the act complained of, but said the public had a

*De Morgan v. Metropolitan Board of Works, Q.B.*

right to hold meetings on the common, and that being a place of public resort, it was contrary to public policy to put down these meetings unless a breach of the peace was occasioned, and that, to make a bye-law which empowered the Board of Works to prohibit or permit them, was beyond the powers conferred by the Act in question on the board.

Clapham Common is of about 200 acres in extent, and there are ancient rights of pasturage belonging to the commoners. There was also a lord of the manor, with certain rights and interest in the common, until, under the recent Act, his right and interest in the common was conveyed to the Board of Works. Under the local Act, 40 & 41 Vict. c. cci., and the scheme for the management of Clapham Common which is made part of the Act, the common "is dedicated to the use and recreation of the public as an open and unenclosed space for ever, and shall, for the purposes of the scheme, be regulated and managed by the Metropolitan Board of Works."

It was provided that no bye-laws framed under the powers of the Act should be repugnant to the laws of England or the provisions of the scheme, and no such bye-laws should, as against any person "entitled to any estate, interest or right of a profitable or beneficial nature in, over or affecting the common, operate or be construed so as to take away or injuriously affect such estate, right or interest." Under this scheme, as authorised by the said Act, bye-laws were made by the Board of Works and duly confirmed, in which certain acts and things are prohibited, and declared to be offences, and subject to penalties, among them, under clause 27, "delivering any public speech, lecture, sermon or address of any kind or description whatever, except with the written permission of the board first obtained, and upon such portions of the common, and at such times as may, by such written permission, be sanctioned by the Board."

It was proved, and indeed admitted, by the defendant that he did preach a sermon on the day named to a considerable assemblage without having obtained

the permission of the board. Some evidence was given of public meetings being held without remonstrance on the part of the commoners or of the lord of the manor. Such evidence, though scarcely going back for twenty years, was probably true. But even so, although it might shew that no steps were taken to prevent those meetings, and therefore, perhaps, acquiescence in a trespass to that extent, it was not strong enough to prove a positive right on the part of the public—a right of user which would be inconsistent with the beneficial user of the common for quiet pasturage. Such a right could scarcely, I thought, be claimed on any common, though possibly it might be on some particular spot, by long and ancient prescription.

The question, then, appeared to come to this—"Is the bye-law a reasonable one for the preservation of order?" It appeared to me that it was.

[The magistrate then stated various arguments and reasons, and concluding that the board had discretion to refuse the appellant permission to preach a sermon, stated that he fined the appellant 20s. and 3l. 3s. costs.]

The opinion of the Court is, therefore, requested upon the point whether, under the circumstances stated, the Metropolitan Board of Works had power to make the bye-law in question, and whether the conviction of the appellant under it was justifiable?

The appellant in person argued against the validity of the conviction.

As in fact public meetings had before taken place without interruption on this common, that was in exercise of a right enjoyed by the public which could not come within the bye-laws. The bye-laws may be for the preservation of order, that is, they may regulate public meetings but not prohibit them; and it is expressly enacted that no bye-law is to take away or injuriously affect any right or interest of any person in or over the common. Then the section enumerates the various things which may be prohibited, these being the deposit of rubbish, the cutting of turf and trees, &c.; and it is contended that the words "preservation of order" are to be read by the light

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of those prohibitions. Then it cannot be said the bye-law requiring permission to be previously given is necessary for preserving order, because the 2nd Bye-law authorises the removal of persons behaving in a disorderly manner or using improper language without warrant by the officers of the board. The 27th Bye-law really gives the board the power of prohibiting meetings altogether, and this is beyond the intention of the Act. A similar bye-law in reference to Wimbledon Common was held to be *ultra vires*, and the decision was not appealed against.

It would be enough for the preservation of order if the board set apart a portion of the common for holding meetings.

*Biron*, for the respondents.—We admit that this bye-law gives the power to the board of prohibiting meetings, but we say that that power is essential for the preservation of order. It is all important to know who is the person who is to make the address, so as to judge whether disorder is likely to be caused or not.

As to Bye-laws 2 and 5, they merely declare the law, as those offences can be dealt with by law without the bye-laws. The appellant's argument throughout assumes that there is a right of holding public meetings which has been interfered with, but this is found by the magistrate not to exist; and then section 13, which deals with existing estates, interests and rights, has no reference to any such supposed right as this.

The Wimbledon Common case is not in point, because in that Act public meetings were recognised and authorised, and a special power of regulating them was conferred on the Board of Conservators. It was held that this power did not entitle the conservators to make a bye-law prohibiting them altogether; but the present is quite different, as no such right is recognised.

The appellant in reply.

*Cur. adv. vult.*

The judgment of the Court (1) was (on the 28th of February) delivered by

(1) Lush J., and Manisty, J.

LUSH, J.—This is a case stated by way of appeal against a conviction by a metropolitan police magistrate, whereby Mr. De Morgan was convicted in the penalty of 20s. and 3l. 3s. costs, for infringing a bye-law of the Metropolitan Board made under the Metropolitan Commons Supplemental Act, 1877.

The bye-law in question is one of a series of bye-laws for the regulation and management of Clapham Common. It prohibits the "delivery of any public speech, lecture, sermon or address of any kind or description whatever, except with the written permission of the board first obtained, and upon such portions of the common and at such times as may by such written permission be directed and sanctioned by the board."

The appellant admitted that he had delivered a sermon on the common without having obtained the permission of the board, but contended that the bye-law was *ultra vires* and void, and this is the question which is submitted for our decision.

As the common was purchased under the authority of Acts of Parliament which we had not the opportunity during the argument to examine, we took time to consider our judgment.

The appropriation to public use of this and other commons within the metropolitan district, was made under the authority of the Metropolitan Commons Act, 1866.

By this Act the enclosure commissioners were prohibited from entertaining an application for the enclosure of a metropolitan common, and were authorised on a memorial by the lord of the manor or by the commoners or the local authority to prepare a scheme for the establishment of local management with a view to the expenditure of money on the drainage, levelling and improvement of a metropolitan common, and to the making of the bye-laws and regulations for the prevention of nuisances and the preservation of order thereon.

The scheme was to be laid before Parliament, and to have no operation until confirmed by Act of Parliament.

The scheme for Clapham Common, which was confirmed by the 40 & 41 Vict.

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c. cci. (Metropolitan Commons Supplemental Act, 1877), recommended the Metropolitan Board to carry into effect certain preliminary agreements whereby the lords of the manor agreed to sell the fee simple of the common to the board, subject to all such rights of common, commonable rights, rights of way and water as any person, other than the conveying parties, may have therein, and provided that after the completion of the purchase, the common should be dedicated to and for the use and recreation of the public, as an open and unenclosed space for ever, and should be regulated and managed by the board. The board were empowered to drain, plant, ornament and improve the common as might be necessary; but no houses were to be erected thereon, except such lodge or other buildings as might be necessary for the maintenance or management of the common.

The power to make bye-laws is in these terms—"The board shall frame bye-laws and regulations for the prevention of nuisances and the preservation of order on the common, and particularly for preventing the deposit of rubbish on, and the illegal taking, cutting, felling and sale of turf, sod, bog earth, gravel, sand, loam, clay, gorse, furze, fern, brushwood, trees and the like from the common, and regulating the user of the common or any parts thereof for the exercise of horses thereon, or for riding purposes, also for the regulation of bathing in the several ponds on the common." There is the usual proviso that "no bye-laws shall be repugnant to the laws of England or the provisions of the scheme, and further, that no bye-laws shall, as against any person entitled to any estate, interest or right of a profitable or beneficial nature in, over or affecting the common, which shall not be purchased or acquired by the board, operate or be construed so as to take away or injuriously affect such estate, interest or right."

In pursuance of the power thus conferred, the board framed and published a code of bye-laws which were duly confirmed by Her Majesty's first Commissioner of Works, one of which bye-laws is the one in question.

The appellant who argued the case

before us in person impeached the validity of the bye-law on two grounds—1st. He contended that the public had acquired a right to hold meetings on the common prior to the passing of the Act, and that it was therefore repugnant to the scheme to put any restriction upon the exercise of that right.

The magistrate reports to us that some evidence was given of public meetings being held without remonstrance on the part of the commoners or of the lords of the manor, though scarcely going back so long as twenty years, but finds that such user did not constitute a right or prove anything more than an excused or licensed trespass. In this opinion we entirely concur. The common was the soil of the lord of the manor, and the only rights over it were rights of pasture and other commonable rights of the commoners, and perhaps private rights of way. These are the rights, which not having been purchased by the board are preserved. No such right as that claimed by the appellant on behalf of the public is known to the law. This ground of objection, therefore, entirely fails. 2nd. He contended that the common having been "dedicated to and for the use and recreation of the public as an open and unenclosed space for ever," the board could not prevent the public from assembling there whenever they pleased for the purpose of hearing sermons, or lectures, or addresses on any subject, religious, political or otherwise. If this argument were sound, it would follow that any number of public meetings might be held at the same time in various parts of the common, even to the extent of monopolising the whole area, to the disturbance of the neighbourhood and the exclusion of that portion of the public who desired to use it for the purpose of recreation. We are satisfied that such was not the intention of the scheme which Parliament has sanctioned. Its object was to secure in perpetuity the common as a place which the public might use as of right for the purpose of recreation; and in order that all classes may at all times share in its enjoyment, the user of the common is necessarily placed under regulation. Bye-laws are

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a code of restrictions. Modes of user, which if enjoyed without limitation as to time or place would unduly interfere with the comfort of others, such as riding, boating, cricketing, bathing and the like, are put under reasonable restrictions. It is equally necessary that the holding of public meetings on the common should be also put under regulation. And what can be a more reasonable mode of regulating such meetings than to require information beforehand what the object and character of the meeting are in order that the board may be able to judge whether it is such as ought to be allowed on the common, and if so, to prescribe reasonable limits as to time and place. Mr. De Morgan contends that order may be sufficiently preserved by the arrest and punishment of persons who by becoming riotous or committing a breach of the peace violate the law. These, however, are retributive measures which operate only indirectly, whereas the Act contemplates and requires precautionary and preventive measures tending directly to secure the comfortable enjoyment of the common by all classes.

We are, therefore, of opinion that the bye-law is valid and consequently the conviction must be affirmed with costs.

*Conviction affirmed.*

Solicitor—Appellant in person; Reginald Ward,  
for the Metropolitan Board of Works.

[IN THE QUEEN'S BENCH DIVISION.]

1879. }  
Dec. 3. } THE QUEEN v. PADBURY.

*Bastardy Amendment Act, 1872 (35 & 36 Vict. c. 65), s. 4—Order of Affiliation—Mistake in drawing up Order—Omission of Words "Maintenance and Education"—Amendment—12 & 13 Vict. c. 45. s. 7.*

*By the Bastardy Amendment Act, 1872, s. 4, the justices who adjudge a man to be the father of a bastard child may make an order upon him for the payment to the*

*mother of a sum of money weekly for the "maintenance and education" of the child:—Held, that an order purporting to be under section 4 for the payment of a weekly sum to the mother absolutely, and which contained no direction for the application of any part thereof for the "maintenance and education" of the child was bad, and could not be amended by the Court under 12 & 13 Vict. c. 45. s. 7.*

This was a Special Case stated by the Court of Quarter Sessions for the county of Warwick, and was an appeal against an order of affiliation, which after the usual recitals adjudged the appellant "to pay unto Emily Hannah Smith, the mother of the child, so long as he shall live and shall be of sound mind, and shall not be in any gaol or prison or under sentence of transportation, or to the person who may be appointed to have the custody of such child under the provisions of an Act passed in the eighth year of the reign of her present Majesty, intituled 'An Act for the further amendment of the laws relating to the poor in England,' a sum of two shillings per week from the 25th day of January last, being the day upon which such application was made, until the said child shall attain the age of thirteen years or shall die."

The child in question was born on the 25th of December, 1878; the application was made on the 25th of January, 1879, and the order of affiliation on the 8th of February, 1879.

At the hearing of the appeal it was objected that the order was bad, on the grounds—1. That the order could only be made from the date of birth or from the date of the order. 2. That the payment contained no direction for the application of any part of the said sum for the maintenance and education of the bastard child, in accordance with the provisions of the Bastardy Laws Amendment Act, 1872, and the statutes amending the same. The Court of Quarter Sessions overruled the objections, and confirmed the order of the justices, but stated the above case for the opinion of this Court.

The case and order having been brought

*The Queen v. Padbury, Q.B.*

up by *certiorari*, and a rule *nisi* to quash the order of Sessions having been obtained by the appellant—

*Soden*, for the respondent in the appeal, shewed cause.—The question arises under 35 & 36 Vict. c. 65. s. 4, by which the justices who adjudge a man to be the father of a bastard child may proceed to make an order on him “for the payment to the mother of the bastard child, or to any person who may be appointed to have the custody of such child, under the provisions of 7 & 8 Vict. c. 100, of a sum of money weekly, not exceeding five shillings, for the maintenance and education of the child . . . and if the application be made before the birth of the child or within two calendar months after the birth of the child, such weekly sum may, if the justices think fit, be calculated from the birth of the child.” The appellant raised two objections to the order of affiliation, first, that the justices had no power to make an order from the date of the application, and, secondly, that the order was bad because payment was to be made to the mother absolutely and it contained no provision for maintenance and education. As regards the first point there is nothing in the statute which makes it illegal to date the payment from the date of the affiliation, and the discretionary power given to the justices to have the payment under an affiliation order calculated “from the birth of the child” is quite consistent with the interpretation put upon the statute by them. The other side will rely on *The Queen v. Tomlinson* (1), but in that case there was an admitted mistake on the part of the justice, and the only question argued was whether the order could be amended under 12 & 13 Vict. c. 45. s. 7.

As regards the second objection it is contended that the order is on the face of it sufficient to comply with the provisions of 35 & 36 Vict. c. 65. It follows Form 8 to 8 & 9 Vict. c. 10.

[COCKBURN, C.J.—That statute did not contain the words “maintenance and education.”]

(1) 42 Law J. Rep. M.C. 1; Law Rep. 8 Q.B. 12.

Lastly, even if either of the objections taken by the appellant at the sessions is sound, the power to make the necessary amendment is conferred upon the Court by 12 & 13 Vict. c. 45. s. 7, by which it is enacted that, “if upon the return to any writ of *certiorari*, any objection shall be made on account of any omission or mistake in the drawing up of an order or judgment, and it shall be shewn to the satisfaction of the Court that sufficient grounds were in proof before the justice or justices making such order or giving such judgment, to have authorised the drawing up thereof free from the said mistake or omission, it shall be lawful for the Court, upon such terms as to payment of costs as it shall think fit, to amend such order or judgment and to adjudicate thereupon as if no such omission or mistake had existed.”

*Vesey Fitzgerald*, for the appellant, was not called upon to argue.

COCKBURN, C.J.—I am of opinion that this order has not been made conformably with the provisions contained in 35 & 36 Vict. c. 65. The order must, under this Act, be an order for the payment of money for the maintenance *plus* the education of the bastard child, and I think that the omission of the words from the order is fatal to its validity. I am sorry for the result, particularly as this is a mistake in substance as distinguished from a mistake in form, so that there is no power to amend under 12 & 13 Vict. c. 45. s. 7.

MANISTY, J., concurred.

*Rule absolute to quash the order.*

Solicitors—Routh & Co., agents for Lane, Stratford-on-Avon, for appellant; R. H. Davies, agent for E. V. Nicoll, Shipston-on-Stour, for respondent.

[IN THE QUEEN'S BENCH DIVISION.]

1880. { THE QUEEN, on the prosecution  
Feb. 21. { of SIR JAMES TAYLOR INGHAM,  
KNT. (respondent), v. TRUELOVE  
(appellant).

*Obscene Books—Order for Destruction—  
Death of Complainant before Order—Lapse  
of Proceedings—20 & 21 Vict. c. 83.*

*In an appeal to sessions against an order made by a magistrate under Lord Campbell's Act (20 & 21 Vict. c. 83), for the destruction of certain books found on the appellant's premises, it was proved that the complainant had died after the summons was issued, but before the order appealed against was made. Thereupon it was contended by the appellant that the proceedings lapsed, as there was then no person in the position of a prosecutor:—Held, that inasmuch as the proceedings were quasi criminal in their nature, the death of the complainant created no lapse, and that it was the duty of the magistrate, having once issued his summons on the information, to proceed.*

This was an appeal to the Quarter Sessions for the county of Middlesex, against an order, dated the 4th day of October, 1878, and made by virtue of 20 & 21 Vict. c. 83, by Sir James Taylor Ingham, Knight, one of the magistrates of the police courts of the metropolis sitting at the police court, Bow Street, within the Metropolitan Police District, and in the county of Middlesex, whereby it was adjudged and ordered that 1,212 copies of a pamphlet entitled, *Individual Family and National Poverty*, and 292 copies of a pamphlet entitled *Moral Physiology*, all found on the premises of the said Edward Truelove, should be destroyed at the end of seven days.

This order was confirmed, subject to the opinion of the Queen's Bench Division of the High Court of Justice on the following Case.

#### CASE.

1. On the 15th day of May, 1877, James Vaughan, Esq., one of the magistrates of the police courts of the metropolis, sitting at the police court, Bow Street, in the county of Middlesex, and within the Metropolitan Police District, upon

the complaint of one John Green, granted a special warrant under the statute, 20 & 21 Vict. c. 83. s. 1, directed to Henry Wood, one of the inspectors of the metropolitan police, to search the premises of Edward Truelove, of 256, High Holborn, in the county of Middlesex, and seize all obscene books, papers or writings found on his premises.

2. On the said 15th day of May, 1877, the said Henry Wood, by virtue of the said warrant, entered the premises and therein seized 1,212 copies of a pamphlet, entitled, *Individual Family and National Poverty*, and 292 copies of a pamphlet, entitled *Moral Physiology*.

3. On the 16th of May, 1877, the said Sir James Taylor Ingham, Knight, one of the magistrates of the police courts of the metropolis as aforesaid, sitting at the said police court, Bow Street, granted a summons requiring the said Edward Truelove as occupier of the said premises to appear on the 22nd day of May, 1877, at the said police court, Bow Street, to shew cause why the said pamphlets, seized on his premises, should not be destroyed.

4. On the 22nd day of May, 1877, the said summons came on to be heard at the said police court, and the hearing thereof was adjourned from time to time until the 3rd day of October, 1878, when the said Edward Truelove shewed cause.

5. The hearing of the summons was adjourned from the said 3rd day of October, 1878, until the following day, when the said Sir James Taylor Ingham, Knight, made an order, adjudging the said pamphlets to be obscene, and ordering that all the said pamphlets be destroyed within seven days.

6. On the 10th day of October, 1878, the said Edward Truelove duly gave notice in writing of appeal to the said Sir James Taylor Ingham, Knight, against the said order, and duly entered into recognisances to prosecute the appeal before the next general or quarter sessions for the county of Middlesex.

7. On the 21st day of October, 1878, at the quarter sessions holden for the county of Middlesex, it was ordered that the hearing of the appeal should be adjourned to the 18th day of January, 1879, and on the said 18th day of January

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the hearing was further adjourned until the next quarter sessions holden for the said county.

8. The said appeal came on to be heard on the 26th day of April, 1879.

9. It then appeared in evidence that the said John Green, the complainant, died on the 25th day of May, 1877.

10. At the close of the respondent's case, the counsel for the appellant made the objection that after the death of the said complainant, John Green, all proceedings against the appellant lapsed, as there was then no person in the position of prosecutor. The counsel for the respondent contended that the proceedings did not lapse, and that even if they did the Court could not give effect to the objection as it was not included in the grounds of appeal. The appellants replied, that in the absence of a prosecutor or complainant, the Court of Quarter Sessions had no power to deal with the order, and the objection, therefore, being one to jurisdiction, it was not necessary for it to be included in the grounds of appeal.

11. The learned Assistant Judge then asked the appellant's counsel whether an application had been made to the magistrates who made the order to substitute another prosecutor for the said John Green deceased. On being answered in the negative, the learned Assistant Judge was clearly of opinion that the appellant's objection was a good one, and the Court of Quarter Sessions thereupon so decided, but held that they could not give effect to it as it was not included in the grounds of appeal.

12. The Court thereupon heard the appellant's counsel upon the merits, and being of opinion that the said pamphlets were obscene within the meaning of the Act, affirmed the order with costs, subject to the above case.

The questions for the Court are:—

1. Whether the proceedings against the appellant lapsed upon the death of the complainant, John Green.

2. Whether, if they did so lapse, the fact that the question was not included in the appellant's grounds of appeal precluded the Court of Quarter Sessions from giving effect to the said objection.

If the Court should be of opinion that the proceedings did lapse upon the death of John Green, and that it was not necessary that the objection should appear in the grounds of appeal, then the order to be quashed.

If the Court should be of opinion that the proceedings did not so lapse, then the order to be affirmed.

If the Court should be of opinion that the proceedings did so lapse, but that the objection should have been a ground of appeal, then the order to be affirmed (1).

(1) By 20 & 21 Vict. c. 83. s. 1—"It shall be lawful for any metropolitan police magistrate . . . upon complaint made before him upon oath that the complainant has reason to believe, and does believe, that any obscene books . . . are kept in any house, shop, room or other place . . . for the purpose of sale, or distribution, exhibition for purposes of gain, lending upon hire, or being otherwise published for purposes of gain, which complainant shall also state upon oath, that one or more articles of the like character have been sold, distributed, exhibited, lent or otherwise published as aforesaid, at or in connection with such place so as to satisfy such magistrate . . . that the belief of the said complainant is well founded, and upon such magistrate . . . being also satisfied that any of such articles so kept for any of the purposes aforesaid, are of such a character and description, that the publication of them would be a misdemeanour and proper to be prosecuted as such, to give authority by special warrant to any constable or public officer into such house, shop, room or other place . . . to enter in the daytime, and to search for and seize all such books . . . found in such house, and to carry all the articles so seized before the magistrate issuing the warrant . . . and such magistrate shall thereupon issue a summons calling upon the occupier of the house or other place which may have been so entered, by virtue of the said warrant, to appear within seven days before such police stipendiary magistrate, to shew cause why the articles so seized should not be destroyed . . . and if such occupier or some other person, claiming to be the owner of the said articles, shall not appear within the time aforesaid, or shall appear and such magistrate . . . shall be satisfied that such articles or any of them are of the character stated in the warrant, and that such or any of them are kept for the purposes aforesaid, it shall be lawful for the said magistrate . . . to order the articles so seized . . . to be destroyed . . . unless notice of appeal to be given."

By section 4—"Any person aggrieved by any determination of such magistrate . . . may appeal to the next sessions . . . giving to the magistrate . . . whose act or determination shall be appealed against, notice in writing of such appeal and

*The Queen v. Truelove, Q.B.*

On the case being brought up by *certiorari*, and a rule *nisi* to quash having been obtained,

*Mead* shewed cause.—This was a criminal proceeding, and therefore as the Crown was the real prosecutor, it did not abate on the death of the complainant, who had no interest in the matter.

[He was stopped by the Court.]

*Hunter* (*J. M. Davidson* with him), on behalf of the defendant, supported the rule.—The informer is a necessary party to the proceedings.

[*LUSH, J.*—How do you make his continued existence material?]

It becomes very material as regards the costs of an appeal, inasmuch as no costs can be recovered against the justices, but against the informer, as the "party appealed against"—*The King v. Hants* (2). It is admitted that in the present case no one was substituted for the original complainant upon his death. The objection therefore taken at the sessions was valid and fatal to the jurisdiction, and need not therefore appear in the grounds of appeal.

*Mead*, in reply.—The death of the party complaining does not abate a proceeding of this kind—*The Queen v. The Justices of Leicestershire* (3). If the order made was void for want of jurisdiction, it should have been brought up by *certiorari*, to be quashed on that ground. But here the defendant has, by appealing to the sessions, recognised the jurisdiction to make the order. He cited *Waller v. Taylor* (4), and *Ex parte Bradlaugh* (5).

of the grounds thereof . . . and entering within seven days into a recognisance . . . to appear and prosecute such appeal, and to abide the order and pay such costs as shall be awarded by such Court of Quarter Sessions . . . and such Court, upon hearing and determining such appeal, shall and may, according to their discretion, award such costs to the party appealing against as they shall think proper . . . provided always that it shall not be lawful for the appellant on the hearing of any such appeal to go into or give evidence of any other grounds of appeal against any such order, act or determination than those set forth in such notice of appeal."

(2) 1 B. & Ad. 654.

(3) 15 Q.B. Rep. 88; 19 Law J. Rep. M.C. 209.

(4) 2 Bulst. 261.

(5) 47 Law J. Rep. M.C. 105; Law Rep. 3 Q.B. D. 610.

*LUSH, J.*—I am of opinion that there is no valid objection to the confirmation of the order made by the magistrates. I cannot at all agree with Mr. Hunter's contention that the death of the informant caused a lapse in the proceedings. The information is laid on behalf of the public, and under the provisions of a public statute. The proceedings are of a *quasi* criminal nature, and the presence of the party who made the complaint upon oath, as directed by the statute, is not required. It would be very prejudicial to the administration of justice if the presence of the complainant was required, otherwise the party laying the information might or might not proceed as he thought proper, a result which would be very injurious in the case of a prosecution instituted upon public grounds and for the protection of the public. It seems to me that it was the duty of the magistrate, when once put in motion by a proper information, to proceed with the prosecution, and make the necessary order, whether the informant continues to prosecute or not. This being a *quasi* criminal proceeding, I can find nothing whatever in the terms of the statute to require that the complainant should be a party. [His Lordship read section 1.] After certain preliminaries have been duly gone through, the magistrate is to issue a summons, calling upon the party to appear within seven days, to shew cause why the articles seized should not be destroyed. The magistrate is then required, if satisfied that the offence has been proved, to order the articles seized under his warrant to be destroyed. Not a word is said in the section about any further interference on the part of the informer being necessary. The magistrate when once properly put in motion is bound to proceed. Then comes the appeal clause, by which any person aggrieved by any act or determination of the magistrate, may appeal to the sessions, upon giving to the magistrate a proper notice in writing. There is no machinery whatever provided for giving any notice of the appeal to the complainant. Then due notice of the appeal having been given to the magistrate, as well as the grounds of the appeal, the

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party appealing is required, within a specified time, to enter recognisances to appear and prosecute the appeal, and to abide the order of, or pay such costs as shall be awarded by the sessions, who have power to award "such costs to the party appealing or appealed against as they shall think proper." Mr. Hunter has laid stress on these latter words, as shewing that the presence of the complaining party is necessary, as being the party appealed against; but I fail to see why, when the magistrate goes on, he should not be the party appealed against. Who that party may be is, no doubt, a matter to be ascertained; but it need not necessarily be the complainant. The proceedings are throughout of a criminal rather than of a civil nature, and stand on the footing of ordinary criminal cases which do not lapse by the death of a prosecutor. The magistrate's duty in such a case was to proceed; here he did proceed and made the order, and, in my judgment, the objection taken at the sessions cannot be sustained.

MANISTY, J.—I agree with everything that my brother Lush has said as to the proceedings not having lapsed by the death of Green. It is therefore unnecessary for us to answer the second question.

*Rule discharged.*

Solicitors—The Solicitors to the Treasury, for the prosecution; Harper, Broad & Battcock, for defendant.

[IN THE COMMON PLEAS DIVISION.]

1880. } WHITE (*appellant*) v. FOX AND  
Feb. 27. } ANOTHER (*respondents*).

*Justices—Summary Jurisdiction—Ouster of Jurisdiction—Mens rea—Assault and Battery—24 & 25 Vict. c. 100. ss. 42 and 46.*

*The question as to property which will oust the jurisdiction of justices to determine a charge of assault under 24 & 25 Vict. c. 100. s. 42, must be a question as to real property.*

*Where two persons who were gamekeepers in the employ of a landlord of a farm to whom the right to game and rabbits was reserved, were charged before the justices by the tenant of such farm, under 24 & 25 Vict. c. 100. s. 42, with assaulting and beating him, and the acts complained of were done in a scuffle to take from the tenant whilst on his farm his bag, in which were rabbits claimed as the landlord's property:—*

*Held, that the fact that the justices were of opinion that the gamekeepers acted under a bona fide belief that they had a right to do the acts complained of did not oust the jurisdiction of the justices, no question having arisen as to title to any interest in land within the meaning of section 46 of 24 & 25 Vict. c. 100.*

CASE stated under 20 & 21 Vict. c. 43 by the justices for the county of Dorset.

On the 8th of November, 1879, a complaint was preferred by the appellant against the respondents, under section 42 of 24 & 25 Vict. c. 100, charging them with assaulting and beating the appellant.

At the hearing of the said complaint it was admitted by the respondents that the appellant rented Notton and Throop farms, in the parish of Maiden Newton, consisting of about 500 acres, of one Richard Brinsley Sheridan, Esq.

It was proved by the appellant that no lease of the said farm, or any agreement or document under seal, reserving the game and rabbits to the said landlord or any one else, or reserving any right to or for anyone to enter or be on any such lands in search or pursuit of game or rabbits, had ever been executed; but he admitted that he had made and signed proposals for a

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lease, not under seal, of the said farms, which had also been signed as accepted by one Peter Cox, as agent for the said Richard Brinsley Sheridan, and that under the head of exceptions contained in such proposals were the words, "also all waterfowl, fish, game and rabbits, and liberty to hunt, hawk and shoot fish and fowl."

It was also admitted by the appellant in his evidence, that he had from time to time applied to the steward of the said Richard Brinsley Sheridan for permission to kill rabbits on his farms, and that on receiving the same had expressed his obligation for the permission when so granted.

It was also proved that the appellant, as such tenant, had been assessed to and paid the poors' rate in respect of the sporting rights on his farm, which he subsequently claimed of and had been allowed by the said Richard Brinsley Sheridan as a disbursement and deduction from his rent.

It was also proved that about noon on Monday, the 13th day of October last, the appellant and his son, and two men in his employ, were on his said farm with nets and ferrets belonging to the said appellant, engaged in ferreting for rabbits, and that whilst in the middle of one of his fields, and having in his possession his said nets and some rabbits which had been caught by him, the two respondents came upon the said land where the appellant then was, took hold of a bag containing such nets and rabbits, and endeavoured to take the same away from the said appellant, and in so doing dragged the said appellant some sixty paces. In the scuffle so arising the hat of the said appellant was knocked or fell off, and the clothes of the said appellant were torn, and thereby the said appellant was assaulted.

It was admitted that the respondents were gamekeepers in the employ of the said Richard Brinsley Sheridan, and were acting under his orders and authority.

The respondents' solicitor, whilst admitting the facts before stated, contended that the said respondents, being such gamekeepers in the employ of and acting under the orders of the said Richard

Brinsley Sheridan, their master, who claimed the sole and exclusive right to the game and rabbits on the said farm, were acting in the execution of their duty, as such servants to the said Richard Brinsley Sheridan, so claiming to exercise his reserved rights to the game on the farms referred to, or acting in the *bona fide* belief of having such rights, and that in consequence the jurisdiction of the justices was ousted.

The appellant's solicitor contended that, it being proved by the appellant and admitted by the respondents' solicitor, that inasmuch as there was no lease, agreement or document under seal in existence, as was necessary to reserve a right to take and kill game and rabbits to any other person than the occupier of the land, there could not be and there was no question of title in dispute, and no reasonable grounds for a *bona fide* belief that the respondents, as such servants of the said Richard Brinsley Sheridan, had a right to take or attempt to take the bags, nets and rabbits complained of, and that even if there had been a legal reservation of the game, that would not justify the assault complained of, and so oust the jurisdiction of the justices to adjudicate thereon, and if deemed right, convict the respondents thereof.

The solicitor for the respondents, however, contended that, as in the proposals for lease, although not under seal, the game and rabbits were expressly reserved, they belonged exclusively to the landlord (the said R. B. Sheridan), and that the respondents, as his servants, were justified in taking the bags, nets and rabbits from the appellant, and did so under a *bona fide* belief that they were justified in so doing, and that as the question in dispute was one arising out of land, or some interest therein or accruing therefrom, the jurisdiction of the justices was ousted.

No other evidence having been offered, the justices were of opinion that the respondents acted under a *bona fide* belief that they had a right to do the acts complained of, and that the jurisdiction of the justices was ousted, and they accordingly dismissed the summons.

The question for the Court was, whether, under the facts above detailed, the

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justices were right in dismissing the summons on the ground stated.

*Bompas*, for the appellant.—Assuming that there was a legal reservation of game to the landlord, that would not justify the respondents, the landlord's servants, in assaulting the appellant, who was a tenant farmer on his own land.

*Arthur Charles (Pitt Lewis with him)*, was then called upon to support the respondents.—The game being the landlord's, the appellant had in his possession what was the property of his landlord, and the respondents only endeavoured to take their master's property, and it does not appear from the case that in doing so they used more violence than was necessary. The respondents acted in the *bona fide* belief that they were justified in doing what they did, and a *bona fide* claim of right under ordinary circumstances suffices to render a conviction by justices for any criminal offence improper.

*Watkins v. Major* (1). In that case the Court thought that the claim of right which was set up in answer to the charge of killing a rabbit contrary to 1 & 2 Will. 4. c. 32. s. 30, was an impossible one in point of law, and that therefore the person so charged might be properly convicted, but otherwise a *bona fide* belief in a right to do what was done would, as Lord Coleridge, C.J., said in delivering judgment in that case, "suffice to render a conviction for any criminal offence improper, for it is well established that justices cannot try the existence of a right *bona fide* set up in answer to a criminal charge brought before them—see *Paley on Convictions*, pp. 47, 137, &c." "But," said Lord Coleridge, C.J., "it has been decided more than once that a person may be convicted under the statute with which we have now to deal and other game statutes, although he had no *mens rea*, and believed that he was not a trespasser." In the present case the charge against the respondents is under section 42 of 24 & 25 Vict. c. 100 of unlawfully assaulting the appellant, and to support such charge there must be a

*mens rea*, and in *Blades v. Higgs* (2) it was held to be a good defence to an action for an assault, that it was committed in an attempt to take from the plaintiff dead rabbits which he had refused to give up, and which he held without the consent of the defendant's master to whom they belonged.

[LORD COLERIDGE, C.J.—There the killer of the rabbits was a trespasser on the land where he killed them.]

Where sporting rights are reserved, the tenant may become a trespasser on his own land, and at all events the respondents would have good reason to believe he was so in the present case. In *Coleman v. Bathurst* (3) the conviction was under 1 & 2 Will. 4. c. 32. s. 12, which makes it an offence for the tenant to take game upon the demised land where the right to the game is reserved to the landlord, and the conviction there was held wrong because the Court were of opinion that in that case there was upon the true construction of the agreement of tenancy no reservation of the game. Where the claim of a right is one which cannot exist at law as a claim as one of the public to fish in a non-navigable river, the claim does not oust the justices of their jurisdiction, *Hudson v. M' Rae* (4). But otherwise, as shewn in *Legg v. Pardoe* (5) a *bona fide* claim is enough to oust the jurisdiction of the justices.

*Bompas* in reply.

LORD COLERIDGE, C.J.—In my opinion the justices were wrong in dismissing the summons, as I clearly think they had jurisdiction. Two persons assault another, and it is not suggested that they had any right to do what they did. They dragged him several paces along the ground, knocked his hat off, tore his clothes, and took from him, besides the rabbits, which for the present purpose I

(2) 10 Com. B. Rep. N.S. 718; 30 Law J. Rep. C.P. 347; on appeal 11 H. L. Cas. 621; 34 Law J. Rep. C.P. 286.

(3) 40 Law J. Rep. M.C. 131; Law Rep. 6 Q.B. 366.

(4) 4 B. & S. 585; 33 Law J. Rep. M.C. 65.

(5) 9 Com. B. Rep. N.S. 289; 30 Law J. Rep. M.C. 108.

(1) 44 Law J. Rep. M.C. 164; Law Rep. 10 C.P. 622.

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will assume were the property of the landlord, what was certainly his own property, and they did all this whilst he was on his own land. All this was before the justices, and they say they have no jurisdiction to decide the matter, because in their opinion these two persons (the respondents), *bona fide* thought that they had a right to assault the appellant, and to take his property. We were referred during the argument to several cases respecting *mens rea*, which are important when that question arises, but this is a proceeding under 24 & 25 Vict. c. 100. s. 42, which enables the justices to hear and determine the offence of an assault or battery, and section 46 explains under what circumstances the jurisdiction of the justices is ousted. It states that the justices are not to hear and determine any case of assault or battery "in which any question shall arise as to the title to any lands, tenements or hereditaments, or any interest therein or accruing therefrom." In the present case no question of title to any lands arose, but it has been suggested that a question of title to property arose. I am astonished to find that a mere assertion of a title to property being in question should be said at once to oust the jurisdiction of the justices, but without deciding what statement is sufficient, I am of opinion that the question as to property must be a question as to real property. That is the view which has always been taken of old, and is the view taken by *Paley on Convictions*, where when he speaks of the title to property which will oust the jurisdiction (see 5th edit., p. 137), he means a title to land, and in the first case, which he gives from 1 Lord Raym. 588, the question was as to the title to land. So also in the case of *Williams v. Adams* (6), where the complaint before the justices was for leaving rubbish on a highway, and the defendant claimed the soil as his, subject only to a private right of way, the Court of Queen's Bench held that no question of title to land was in dispute, but only a question as to what should be done on the land, and that therefore the jurisdiction of the justices was not ousted.

(6) 2 B. & S. 312; 31 Law J. Rep. M.C. 109.

I am of opinion, therefore, that the justices must exercise their jurisdiction in the present case, and say whether an assault has been committed on the appellant, and if it has, they must adjudge the punishment. The question of *bona fides* may most properly and rightly be considered in awarding the punishment, and I observe that *Paley* makes that distinction where in his work on *Summary Convictions*, 5th edit., p. 139, he says, "Where there must be a *mens rea* to constitute an offence, the fact of a man having acted under a claim or notion of right, if established, will form a defence against a criminal proceeding, and must be taken into consideration by the justices, not as a question of title, but as a question of *bona fides*. When, however, the object is to oust the jurisdiction of the justices on the ground that title comes in question, then the claim must be of such a nature as, if substantiated, would afford a defence to an action." That plainly distinguishes between an assertion of a mere right to do what has been done, and a claim of title. No such claim was made here, and the decision of the justices was wrong.

LINDLEY, J.—I am of the same opinion. The charge before the justices was a charge of assault, and it was made under 24 & 25 Vict. c. 100. s. 42, and the 46th section states that the justices are not to have jurisdiction when any question as to the title to any lands shall arise. Now the justices do not find that any such question was involved in this inquiry, but what they find is that the respondents acted under a *bona fide* belief that they had a right to do what they did. Clearly there is nothing in that to oust the jurisdiction of the justices, and there is nothing like a finding of the circumstances stated in the 46th section which would deprive the justices of their jurisdiction to hear and determine the charge.

*Decision reversed.*

Solicitors—Lovell, Son & Pitfield, agents for R. N. Howard, Weymouth, for appellant; J. R. MacArthur, agent for M. C. Weston, Dorchester, for respondents.

[IN THE QUEEN'S BENCH DIVISION.]

1880. }  
May 5. } THE QUEEN v. HUTCHINS.

*Public Health—Paving Private Street—Highway repairable by the Inhabitants at large—Decision of Justices as to Character of Street conclusive—Res Judicata—38 & 39 Vict. c. 55 (Public Health Act, 1875), s. 150—Dismissal of Complaint, Evidence of—11 & 12 Vict. c. 43. s. 14.*

*A decision of justices, unappealed against, on a summons under the Public Health Act against an owner of premises abutting on a street, for payment of the expenses incurred by the board in paving, &c., such street is final and conclusive as to the street being or not being a highway repairable by the inhabitants at large.*

*Where such a summons had been dismissed by justices in 1874, and no certificate of dismissal had been required or given under section 14 of 11 & 12 Vict. c. 43:—Held, that upon a fresh summons in 1879, the former adjudication was sufficiently proved by the entry in the justices' note book, and when so proved was binding and conclusive.*

This was a case stated by the Court of Quarter Sessions for the hundred of Salford, on the hearing of an appeal by one Hutchins against an order made upon him by justices in petty sessions whereby he was ordered to pay to the urban authority of Bradford, in Lancashire, a sum of 442*l.*, being his share or proportion of the expenses of paving and levelling a certain street called Mill Street within the district of the aforesaid urban authority.

Hutchins was the owner of property abutting on Mill Street, and in the year 1873, he received notice from the local board to sewer and channel such part of the said street as his property abutted on, and there being no compliance on his part with such notice, the local board did the work themselves and summoned him for payment of the expenses incurred by them in so doing. On the hearing of the summons, which was in 1874, Hutchins contended that he was not liable, because Mill Street was a highway repairable by the inhabitants at large, and the justices

dismissed the summons, thus affirming his contention. Hutchins did not require the justices to make an order of dismissal, nor to give him a certificate of dismissal in the form provided by 11 & 12 Vict. c. 43. s. 14. sched. forms, L. & M. (1), but the book kept by the magistrates' clerk contained an entry of the names of the parties, the information and summons, the nature of the complaint and a memorandum that the summons was dismissed on the ground that Mill Street was a highway.

There was no appeal by the board against such dismissal, but, in 1877, having determined to level and pave the same street, the board again gave notices to Hutchins and the other owners of property in the street to do the work, and on their default, the board having done it themselves, summoned Hutchins again for payment of the expenses. This summons came on for hearing in 1879, when the magistrates heard evidence as to the nature of the street, and reversing their former decision found that it was not a highway repairable by the inhabitants at large, and ordered Hutchins to pay 442*l.* as above-mentioned. Against this order Hutchins appealed to the Quarter Sessions, and among his grounds of appeal stated that Mill Street was a highway repairable by the inhabitants at large.

On the hearing of the appeal it was contended on his behalf that the matter was *res judicata*, and on proof of the previous adjudication as evidenced by the magistrates' book that the order must be quashed.

It was objected to this that the point of *res judicata* was not raised by his grounds of appeal, and that even if it were, there was no estoppel created by the previous decision so as to preclude the board from coming again with ad-

(1) 11 & 12 Vict. c. 43. s. 14. "If the said justice or justices shall dismiss such information or complaint, it shall be lawful for such justice or justices, if he or they shall think fit, being required so to do, to make an order of dismissal of the same (L.), and shall give the defendant in that behalf a certificate thereof (M.) which said certificate afterwards upon being produced, without further proof, shall be a bar to any subsequent information or complaint for the same matter respectively against the same party."

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ditional evidence to establish what they had failed before to prove.

The Quarter Sessions refused to allow any amendment of the grounds of appeal. They upheld the order of the justices below, and dismissed the appeal, subject to the following questions stated for the opinion of the Court :—

1. Was it open to the appellant upon the grounds of appeal delivered by him against the order made in 1879, to contend that the matter was *res judicata*?

2. If not, ought the Quarter Sessions to have allowed him to amend his grounds of appeal so as to include that contention?

3. Was the adjudication made upon the summons against the appellant in 1874 conclusive of the question arising upon the summons against him in 1879?

*Hopwood*, in support of the order of Sessions.—The grounds of appeal ought to have given specific notice that the appellant relied on an estoppel. But even if the previous decision could be urged in support of the contention that this street was a highway repairable by the inhabitants at large, the appellant was not in a position to make use of it as a conclusive decision. To enable him to do this he ought to have obtained a certificate of dismissal under *Jervis's Act*, and there can be no estoppel until such certificate has been granted. But the granting a certificate is in the discretion of the magistrates, which shows that the first hearing was not necessarily a final decision. It was in the nature of a non-suit, and it would be very hard to decide an important question involving public rights upon a possibly hurried hearing with insufficient evidence.

[*FIELD, J.*—There was an opportunity for an appeal if the board thought the decision hasty, or if they had additional evidence.]

The Court will not reject the fact that after hearing further evidence the justices have reversed their previous finding.

*Ambrose, contra*, was not called on to argue.

*LUSH, J.*—I am of opinion that this rule must be made absolute. It stands upon a principle of the highest impor-

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tance, namely, that when a matter affecting the rights of property has been decided by a competent authority the decision should be conclusive especially when it is a question raised again between the same parties. The Act of Parliament provides that the local board may require owners and occupiers of premises, fronting, adjoining or abutting upon any street, not being a highway, to sewer, level, pave, flag or channel the same, and upon their default may execute the works and charge them with the expenses; and in the year 1874, the present appellant, *Hutchins*, was summoned to pay his contribution towards the expenses incurred by the local authority for sewerage and channelling this street, and it was alleged that it was a street which had not then become a highway repairable by the inhabitants at large. This question had to be decided at that time by the justices, for if the street were a highway the inhabitants must repair, and the expense could not be thrown on the individual owners.

The summons was duly heard and the justices decided that the present appellant was not liable because the street was a highway. That was a conclusive acquittal of him as regards the claim then made until or unless reversed. The Board might have appealed if, as has been suggested now in argument, the decision was a hasty one, and have had it reviewed by the Quarter Sessions. They did not appeal, but acquiesced till 1879, when having done some further work to the street, notwithstanding that much of the property might have changed hands meanwhile, and much money might have been spent on the faith of there being no liability on the owners to repair, the board took out another summons for payment of a sum of 442*l.* against the same person, and this came on to be tried.

Now I am of opinion that the first decision was binding on the local board. It is true that the appellant had not obtained a written certificate of dismissal, but that is not of the essence. I take the written certificate to be an artificial but convenient mode of proving the dismissal provided by the Act, but not necessary to the validity of the decision

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*The Queen v. Hutchins, Q.B.*

pronounced. I should compare it to the convenient mode of proving a previous conviction by a certificate signed by the clerk of assize. Here the note-book of the magistrates was produced shewing the summons, the names of the parties, the nature of the complaint, the hearing, and the decision that the summons was dismissed on the ground that the street in question was a highway.

The entry does not say in words "a highway repairable by the inhabitants at large," but that is obviously and necessarily the meaning.

I think, therefore, that the adjudication in 1874 was sufficiently proved at the hearing in 1879.

The justices, however, found upon other evidence in 1879, just the contrary to their finding in 1874, and an appeal being had to the Quarter Sessions, the later finding was affirmed, subject to the points raised in this case.

Now, as to these, it is said, first, that the objection to the finding now relied on is not included in the grounds of appeal.

The ground stated is—"That the street is a highway repairable by the inhabitants at large." It is true this does not in terms say that the question has been adjudicated upon before, but I think it sufficiently gives notice of the point to be relied on. That being so, the previous adjudication was admissible in evidence to support that point, and being so admissible and being an adjudication of a competent authority as to the character of the street and made between the same parties, it was, I think, conclusive and binding—*The Queen v. Haughton* (2). I am, therefore, of opinion that there was no need to amend the grounds of appeal; the justices ought to have received the evidence tendered; when received it was binding as a decision of a Court of competent jurisdiction under the circumstances I have stated, and the justices were therefore not at liberty to find as they did in contradiction of it.

FIELD, J.—I am of the same opinion. The Court of Quarter Sessions have stated a case raising three questions for our determination. First, whether it was

open to the appellant on the ground of appeal delivered by him to contend that the matter was *res judicata*. I quite agree with my brother Lush that it was so open. I do not think that grounds of appeal should be construed as if they were pleadings with excessive strictness. It is enough if the point is fairly within the language used, but if it were thought not to be, I should not have the slightest doubt as to amending the grounds of appeal so as to include it, and that is the second question asked us. Here the particular point had been raised before the justices in petty sessions and so was well known to all parties at Quarter Sessions.

The last question is whether the adjudication made in 1874 is conclusive. This is not a mere question of estoppel against which, as such, Courts very properly lean. But this is an adjudication of a Court of justice, of a Court entrusted with very large powers for deciding these and similar matters of great importance. It is a good general rule upon which I always act, that if a competent Court within its jurisdiction has decided a question, its decision should be held to be right until the contrary is proved. What is there to shew that the adjudication in 1874 was not fair? The question then was whether this property was on a highway, and we know that it is a very valuable incident of property to abut on a highway, and the point was investigated, and I do not doubt carefully considered and was decided. There was no appeal from that decision, it remained in force unreversed in 1879. But Mr. Hopwood says the adjudication is not conclusive because a certificate was not drawn up to be put in evidence. That objection has been fully answered by my brother Lush, and I will not repeat his words. Nothing then occurs from 1874 until in 1879 the Board seek to re-open the same question. I am clearly of opinion that they cannot.

*Order of sessions quashed.*

Solicitors—Gregory & Co., agents for A. & G. W. Fox, Manchester, for the prosecution; Norris, Allens & Co., agents for Diggles & Ogden, Manchester, for defendant.

[IN THE QUEEN'S BENCH DIVISION.]

1880. } THE QUEEN v. THE JUSTICES OF  
May 13. } ESSEX.

*Bastardy—Appeal—Absence of Appellant—Order quashed not upon Merits—Second Order—Jurisdiction of Justices.*

*Upon an appeal coming on for hearing to the sessions against an order adjudicating the appellant to be the putative father of a bastard child, it appeared that the respondent, the mother of the child, and the witnesses on her behalf, were not in attendance, owing to some mistake. The Court refused to adjourn the appeal, and quashed the order:—Held, that as the order had been quashed in the absence of all evidence, there had been no decision by the sessions on the merits so as to be final, and that a fresh order could be applied for to the justices at petty sessions by the respondent against the appellant.*

*The Queen v. Glynn* (41 Law J. Rep. M.C. 58) distinguished.

This was a rule calling upon certain justices for the county of Essex, to shew cause why a writ of prohibition should not issue to prevent them from entertaining a bastardy summons for want of jurisdiction under the circumstances herein-after stated.

It appeared from the affidavits that on the 19th of October, 1879, an order had been made by the justices in question, on the application of Ellen Phillips, adjudging one James Frost to be the father of her bastard child, and ordering him to pay the mother a certain sum weekly for the maintenance and education of the child. From this order there was an appeal, which came on for hearing in due course at the Epiphany Quarter Sessions holden at Chelmsford on the 6th of January, 1880. The respondent and her witnesses through some inadvertence not being in attendance at the sessions when the appeal was called on, an application was made on her behalf to have the appeal adjourned till the following day. The application, however, was refused by the magistrates, who thereupon allowed the appeal and quashed the order with costs.

On the 6th of March, 1880, the said

Ellen Phillips applied for and obtained a fresh summons under 35 & 36 Vict. c. 65. s. 3, whereupon a rule nisi for a writ of prohibition was obtained.

It further appeared from the affidavits that no part of the costs of the appeal to the sessions, which had been taxed at 19l. 19s., had been paid by the respondent as directed by the Court.

*W. W. Wood* shewed cause against the rule.—It cannot be disputed that where an application for a bastardy order has been dismissed by justices sitting at petty sessions, the mother can renew her application. It must also be admitted that where an order has been made on the putative father and appealed against, the decision of the sessions is final, and bars further proceedings in cases where there has been a hearing on the merits—*The Queen v. Glynn* (1). [He also cited on this point *The King v. Jenkin* (2), *Pridgeon's Case* (3), *The King v. Tenant* (4), *The Queen v. Harrington* (5), *The Queen v. Machen* (6), *The Queen v. Bridgman* (7).]

Here there was no appearance on the part of the mother, and no witnesses to give evidence, consequently there was no decision on the merits. The decision of the sessions is only conclusive when they "hear the evidence."—See *Pritchard's Quarter Sessions*, citing *The Queen v. Glynn* (1). If the question had been entered upon at all perhaps that might have been a decision on the merits; but here no evidence whatever was offered. A proceeding like this comes within the principle of an order quashed for want of form. See 8 & 9 Vict. c. 10. s. 2. It is analogous to a *nonsuit*.

[LUSH, J.—A Court of Appeal cannot nonsuit; the only question here is, what is the legal effect of an order quashed for want of evidence to support it?]

Appeals to sessions are in the nature

(1) 41 Law J. Rep. M.C. 58; Law Rep. 7 Q.B. 16.

(2) Ca. t. Hard. 301.

(3) Cro. Car. 341.

(4) Str. 716; Ld. Raym. 1423.

(5) 3 N.R. 463; 12 W.R. 420.

(6) 14 Q.B. Rep. 74; 18 Law J. Rep. M.C. 213.

(7) 15 Law J. Rep. M.C. 44.

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of a fresh hearing; the respondent has to begin and tender her evidence. See 8 & 9 Vict. c. 10. s. 6. When this has been done, there has been a "hearing" and the merits cannot be gone into again. If a proceeding like the present were held to be conclusive against all parties, not only the mother would suffer, but the parish authorities who are empowered in certain cases to get a bastardy order against a putative father. See 35 & 36 Vict. c. 65. s. 8. *Ex parte Harrison* (8) is a direct authority in favour of the fresh order being granted when an appeal is dismissed "not upon the merits." See the note to that case in *The Queen v. Glynn* (1).

*O. E. Jones* supported the rule.—The decision of the sessions is final—*The Queen v. Glynn* (1). *Ex parte Harrison* (8) was a case where an appeal was dismissed for some "technical informality," as appears from the report of *Re Glynn* (1). The justices had power to adjourn the appeal, but they declined to do so. If it is held that the proceedings at sessions do not operate as an estoppel, very great hardship will be inflicted on an appellant, particularly when, as in this case, an appeal is rendered abortive through the act of the respondent, and the costs of the appeal have not been paid. Where a fresh order is made, and a fresh appeal becomes necessary to the sessions, precisely the same state of things may occur again, and the appellant may be thus subjected to unreasonable annoyance and expense.

LUSH, J.—The question raised here is one of very considerable nicety, and I have hesitated a great deal before coming to the conclusion that this rule ought to be discharged. It is well established that if a woman fails in her application for a bastardy order before the justices at petty sessions, she may, if she so chooses, apply again, because no appeal is given by the statute, and the decision of the justices at petty sessions is not final. But when an order has been made on a putative father, the statute gives him a right of appeal. On the appeal

he can question the validity of the order, which can only be made on the evidence of the mother, corroborated by other evidence. The appeal given to the sessions is in the nature of a rehearing, and the statute contemplated that justices at sessions should go into the merits, and that their decision should be final between the parties. The 8 & 9 Vict. c. 10. s. 6, expressly provides that upon trial of the appeal, the justices "shall hear the evidence of the mother, and such other evidence as she may produce, and any evidence tendered on behalf of the appellant, and proceed to hear and determine the said appeal in other respects according to law; but shall not confirm the order so appealed against, unless the evidence of the said mother shall have been corroborated in some particular by other testimony." When these preliminaries have been observed, there can be no question that the decision on the appeal is final. *The Queen v. Glynn* (1) sets forth distinctly the principles applicable to a case of this description. There the Court of Quarter Sessions arrived at a decision on the merits. No case has been decided which speaks of the justices' decision at quarter sessions being final where not on the merits. An order quashed for any formal defect is not conclusive. See 8 & 9 Vict. c. 10. s. 2. What is the meaning of the words "on the merits?" They must mean on the evidence produced before the justices. Here the order was quashed because *no* evidence was forthcoming. If the woman had purposely absented herself, I would refuse, if possible, to give her any relief; but it appears she was not in attendance at the proper place and time by a mere accident, and that the Court had refused to adjourn the appeal, and had quashed the order, in the absence of all evidence. In my judgment it is necessary that the judgment of sessions, in order to create an estoppel, should be made on some evidence. I feel, therefore, that we are bound to come to the conclusion that the decision of the sessions in this matter ought not, under the circumstances, to be held an estoppel by the justices at petty sessions. We do not desire to intimate any

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opinion as to the action the justices should take on the determination of the summons. They may fairly take into their consideration all the facts of the case, one of which is that the costs of the abortive appeal, ordered to be paid by the respondent, have not been paid. We give no direction to the justices which can in any way limit their discretion. All we hold is that they are not justified in refusing to go into the matter afresh, for the reason that the decision of the sessions was not on the merits. This rule will therefore be discharged.

MANISTY, J.—I am of the same opinion, and entirely agree with everything which has fallen from my brother Lush.

*Rule discharged.*

Solicitors—E. Doyle & Sons, agents for H. Jones, Colchester, for applicants; Digby & Jones, agents for Digby & Evans, Maldon, for defendants.

## [IN THE QUEEN'S BENCH DIVISION.]

1880. { SPEAR (*appellant*) v. THE GUARDIANS OF THE BODMIN UNION  
May 4. { (*respondents*).

*Poor Rate—Liability to be Rated—Market—Occupier of Stall.*

*The appellant rented two stalls in Bodmin market year by year at a rent payable weekly. The stalls in question had been put up to auction and were bought by the appellant and used by him on market-days. The stalls thus rented were capable of being removed, and there was no agreement that they should always stand on the same identical spot, though the appellant had a right to retain the same relative position in the row:—Held, that there was no such occupation of the stall as rendered the appellant liable to be rated under 43 Eliz. c. 2, he having acquired only the right to a given stall in a given row, and not the right to place one on any definite portion of ground.*

At the Easter Quarter Sessions held in and for the county of Cornwall, 1879, the appellant appealed against a certain rate

for the relief of the poor made by the respondents.

On the said appeal coming on to be heard, the only question between the parties being one of law, it was ordered that the appeal should be respited, and the following case stated for the opinion of the Court under 12 & 13 Vict. c. 45. s. 11:—

1. The appellant, James Spear, is a butcher, carrying on his business at Bodmin, in the county of Cornwall.

2. The respondents are the guardians of the poor for the Poor Law Union of Bodmin. The Bodmin Market House hereinafter mentioned is situate within the respondents' Poor Law Union.

3. The rate for the relief of the poor, in respect of which this appeal is brought, was made by the respondents and duly allowed in February, 1879. The appellant was rated in respect of two stalls situated in the Bodmin market.

4. By an Act of Parliament passed in the 55th year of the reign of his late Majesty King George 3, being 55 Geo. 3. c. 85, the mayor, aldermen and burgesses of the borough of Bodmin were authorised and empowered to erect a market-house within the said borough.

5. The mayor, aldermen and burgesses of Bodmin, shortly after the passing of the said Act, in pursuance of the powers which such Act conferred upon them, duly erected a market-house in the borough. Such market-house consists of a large open space, room or hall, which for convenience is hereinafter called the market-house, and is of a rectangular shape open to the roof, which is of wood and slate and lighted by glass windows in the roof, the roof being supported by pillars. This room, or hall or market-house, is enclosed by four walls, with three large iron gates in the southern wall and three smaller ones in the northern wall. Its floor is of stone from the southern wall to within thirty feet of the northern wall, where it is then made of wood the whole width of the house right up to the northern wall; at the junction of the stone and wooden floors a stone staircase about ten or twelve feet wide and a flight of twelve or fifteen steps leads to an open space beneath the room, hall or market-

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house. This open space below is co-extensive with the wooden portion of the flooring in the market-house, and is about fifty feet broad, thirty feet long, and about fifteen feet high, and is used for a fire-engine house. It also contains a urinal, &c. The whole of such space underneath the floor is within the walls of the market-house. The market-house itself now contains no fixed articles of any description except the pillars above-mentioned. The floor (when the stalls hereinafter mentioned and a balustrade placed around the wall of the stone staircase are taken away) is clear and almost level.

6. The market-house does contain, however, a number of stands or stalls, the larger proportion of which were originally intended for the use of butchers, but some of them are now used by other tradesmen who also use other stalls or standings specially set apart for them. The butchers' stalls, which consist of wooden frames with iron stays and hooks for suspending meat, were originally fixed to the granite flooring by means of iron cramps run in with lead, but on or about the 14th day of June, 1872, these cramps were cut off for the purpose of removing the stalls on account of some public entertainment, and they have not since been restored. The stalls stand on the floor and occupy the same relative position in the house now as they did before they were severed. Some of the stalls are let by the year subject to certain conditions (1), but

(1) The following were the material conditions of auction sale for letting the butchers' stalls referred to in the case:—

"1. The butchers' stalls to be let by auction as heretofore by the council, from the 24th of August, 1878, to the 23rd of August, 1879.

"2. Every occupant of a stall at a rental of not less than 6*l.* a year to have the preference of his stall at the same rental, he taking the next adjoining stall at the same rental of not less than 6*l.*

"3. The council will not receive a greater or less rent than 2*s.* 7*d.* per week from an occasional occupier of a butcher's stall or standing, nor a greater yearly rent than 6*l.* nor less than 5*l.* 1*s.* for each butcher's standing, except the weekly sum of fourpence, for lighting and cleaning the market-house and weighing at the town scales.

"4. No butcher to use any other stalls than those allotted to him by the collector of rents.

"5. The town council reserve to themselves free liberty to use the said market-house and

others are set apart for casual occupiers. Any stranger may apply for and the mayor may grant to him the use of any of the stalls so set apart for casual occupiers for the market-day of any particular week, but the right of a casual occupier to a stall so taken by him only extends to one Wednesday and one Saturday, a distinction (among others) which exists between a yearly and a casual or weekly occupier being that, whereas the former always occupies a stall standing in the same place relatively to the other stalls in the market-house on each succeeding market-day during the year for which it is let to him, the latter cannot insist on doing so as he hires the stall for use on the market-days of one week only. The mayor for the time being, by virtue of one of the borough charters, is clerk of the market (not of the market-house), and on his accession to the mayoralty is sworn faithfully to discharge the duties of his office; and since the passing of the Act referred to in paragraph 4 of this case, he has, with the sanction of the town council, carried out the duties and exercised the rights respectively imposed upon and reserved to them by virtue of that Act with respect to the market-house. The rents payable by the several occupiers of the stalls taken by the year, as well as the tolls paid by the casual stall holders, are collected every Saturday by a person who is appointed and paid by the council for this and for other services, and who is locally known as the mayor's servant.

7. On market-days the stalls stand in rows in the market-house. All the butchers' stalls are of the same construction and pattern, and nearly of the same size, and when on any particular occasion they have become intermixed, the specific stall theretofore occupied by any one butcher has not of necessity been restored to him, but his right to the stall has been deemed to be satisfied by his retaining the same relative position in a certain row of stalls which he theretofore occupied, the mayor, as the representative of the council, determining all questions that arise between the stall holders themselves or

butchers' stalls other than on market days, in such manner and for such purposes as the mayor for the time being shall think fit."

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between any individual stall holder and the town council. The appellant and the other stall holders in the same trade renting stalls for a fixed period of a year have, however, a right to retain the same relative positions or order of standing, and the rentals of the stalls vary according to these relative positions, so that, for instance, a butcher who rents the first stall in a row pays more than the one who rents the last stall in the same row, and is entitled to be placed accordingly. It frequently happens that the market-house is required for purposes other than the market purposes, such as bazaars, concerts and other public entertainments, and on such occasions the stalls can, if necessary, be removed and the floor cleared, though should the stalls be required they are used on such occasions. In instances where the stalls are removed for any such purposes as these, they are by the next market-day placed back on the same part of the market-house as they usually occupy, but since they were severed from the floor they have not always, after removal for the purpose of public entertainments, been restored to exactly the same position (to within a few inches) from which they were removed. The use of the market-house on occasions such as these (on days other than Saturdays only) has hitherto been granted or refused by the mayor, as the representative of the town council, without any reference whatever to the stall holders. Subject to the rights of the stall holders, complete possession of the market-house is retained by the mayor for the time being, as the representative of the council, the so-called mayor's servant keeping the keys, opening the market-house at 7 A.M. on days on which it is in use, closing it at 10 P.M., and allowing no one to remain in it after that hour, and cleaning it and keeping it in proper order.

8. The stalls occupied by the appellant were butchers' stalls, and were let to him on the 24th of August, 1878 (subject to the conditions contained in the appendix, which were read at the auction or public letting held on that day) for the term of one year, from the 24th of August, 1878, to the 23rd of August, 1879. The market days are on Wednes-

days and Saturdays, the latter being the only day on which the market-house is regularly used by the stall holders. On occasions when any butcher has failed to attend on one of the market days, the mayor, as representing the council, has occasionally assumed the right to let his stall to another person for that day. The stall holders are precluded by the conditions of letting, which are set out in the appendix, and are to be taken as forming part of this case, from underletting their stalls; but on a recent occasion, when a stall taken by the year has been underlet, the mayor caused the goods of the underlessee to be removed from and refused to allow him to occupy such stall (1).

The question for the Court was, whether, on the above facts, the appellant was liable to be rated.

*Pitt Lewis*, for the appellant.—The authorities are all in one direction, and go to shew that the appellant is not rateable. He cited *The London and North Western Railway Company v. Buckmaster* (2), *Handcock v. Austin* (3), *The Queen v. St. Pancras* (4), and *The Queen v. Morrison* (5).

[He was then stopped by the Court.]

*Petheram*, for the respondent.—The appellant is liable to be rated in respect of this stall. The test is, whether the ground was let to him so as to create a demise. Here there was an exclusive possession of the stall, and the lessee, in case of a reletting, had the right to have the stall put on substantially the same piece of land.

[He cited *The Queen v. St. Martin's* (6), in which the lessee of a private box of a theatre was held to be rateable for the relief of the poor.]

*Pitt Lewis*.—*The Queen v. St. Martin's* (6) turned on the construction of a local Act, which contained the words "possess or enjoy." In *Holledge's Case* (7) it was

(2) 44 Law J. Rep. M.C. 180.

(3) 14 Com. B. Rep. N.S. 634; 32 Law J. Rep. C.P. 252.

(4) 46 Law J. Rep. M.C. 243; Law Rep. 2 Q.B. D. 581.

(5) 22 Law J. Rep. M.C. 14.

(6) 3 Q.B. Rep. 204; 11 Law J. Rep. M.C. 112.

(7) 2 Robert. Rep. 238.

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holden that a man was not liable to church rates for a stall in a market town, of which he was lessee, and to which he came once a week to sell his wares, then leaving the town, and taking such goods as remained unsold with him. The Court said that they might as well rate any other persons who came to the market to sell their wares.

LUSH, J.—I am of opinion that this appeal must be allowed. The question is, whether this stall holder is an occupier, so as to render him liable to be rated. In other words, whether he has the exclusive occupation of any defined portion of property. Now the facts of the case, in my judgment, altogether negative such an occupation. It appears that the corporation of Bodmin have under the powers of their local Act the right to let the stalls contained in the market-place, which may be either by way of demise or by way of temporary use only. On that point the terms of the statute throw no light. What they have been in the habit of doing with these butchers' stalls, of which the appellant rented one, is to have them put up to auction, giving a certain preference to the old occupiers. The stalls are moveable, and on market-days stand in rows in the market-house. The stalls are of the same construction and pretty much the same size, and when on any particular occasion they have become intermixed, the identical stall occupied by any one butcher has not of necessity been restored to him, but his right to the stall has been deemed to be satisfied by his retaining the same relative position in a certain row of stalls theretofore occupied by him. The appellant and other butchers renting stalls for a fixed period of a year have, however, the right to retain the same relative position or order of standing, and the rentals of the stalls vary according to their relative position, e.g., a butcher who rents the first stall in a row pays more than the one who rents the last stall in the same row, and is entitled to be placed accordingly. Sometimes the market is used between the market-days for various kinds of entertainments; on these occa-

sions the stalls are removed or remain according to circumstances. If they are removed, they are, before the next market-day, placed back on the same part of the market-house as they usually occupy, but they are not always restored to exactly the same position. If stalls are not removed, but are required for use, as at bazaars, the use of the stalls is at the disposal of the town council.

The above are the substantial facts to be found in the 7th paragraph of the Special Case, from which it appears that the right purchased by the appellant is the right to have a given stall in a row of stalls, but not to have his stall placed in any defined portion of the market. There is here nothing like an occupation such as is required by the statute. *The Queen v. St. Martin's* (6) does not at all favour Mr. Petheram's contention. There it was held that the lessee of a private box at a theatre was liable to be rated for the relief of the poor in respect of it, under the terms of a local Act which contained much larger words. Our judgment must be for the appellant.

FIELD, J.—I am of the same opinion. The only question is, whether the facts disclose an occupation such as is required by the statute of Elizabeth, and I think they do not. No right is given to any definite portion of the ground, with a right to exclude anybody else. All that appears is, that the appellant is in the habit of coming on market days to the place or spot. But without the exclusive right he does not become the occupier. I quite agree that this is not a case in which the appellant is liable to be rated.

*Judgment for appellant.*

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Solicitors—Coode, Kingdon & Cotton, agents for R. P. Edyvane, Bodmin, for appellant; G. E. Philbrick, agent for P. J. Wallis, Bodmin, for respondents.

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[IN THE QUEEN'S BENCH DIVISION.]

1880. { GOLDSTRAW (appellant) v.  
March 23. { DUCKWORTH AND ANOTHER  
(respondents).

*Public Health—Highway—Construction of Local Act—Projection "over or upon" Pavement—Oriel Window not Interfering with Traffic.*

An Act "for the protection of the health of the inhabitants of Liverpool, and the better regulation of buildings in the borough," enacted (among other provisions dealing entirely with footways) that "no projection of any kind should be made in front of any building over or upon the pavement," with certain exceptions in favour of shop fronts and doorways:—Held, that an oriel window, which projected over the pavement of a street, but did not interfere with the use of the footpath, but only with the access of light and air to the street, was not within the above provisions.

CASE stated under 20 & 21 Vict. c. 43.

Upon the information of the appellant the respondents were summoned for that they, being architects employed in the erection of a certain building, to wit, an hotel in the borough of Liverpool, did not within three months last past truly observe the provisions and regulations contained in an Act of Parliament intituled "An Act for the protection of the health of the inhabitants of the borough of Liverpool, and the better regulation of buildings in the said borough," by having built an oriel window in the said hotel, which projected over the pavement of the street contrary to the said Act.

On the hearing of the information it was proved that the respondents were the persons employed in the building referred to in the information.

It was also proved that the projection complained of was an oriel window of stone work, which measured from the bottom to the top eleven feet, and projected over the footpath two feet six inches, and that the distance between the lowest part of the window and the footpath was from fourteen to fifteen feet, and that such oriel window was not in the nature of a shop front, doorway, cornice

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or pilaster; and it was also proved that the land over which the window projected was, to the extent of two feet six inches, part of the public highway, being in fact the foot pavement of the street.

It was, however, proved that the window was not any nuisance or obstruction, except only so far as any such projection necessarily interfered with the access of light and air to the street, and with the regularity of the line of buildings in the street, and that it did not interfere with the present use of the footpath.

The magistrate was of opinion that the 67th section of the Building Act only prohibited projections which were either placed upon the pavement or in such manner over it as to prevent the free passage along it, and that it did not apply to projections in the upper part of buildings; accordingly he dismissed the information.

The question of law arising upon the case was, whether the 67th section of 5 Vict. sess. 2. c. xlv., prohibits projections which, though not obstructing or resting upon any part of the footpath, project from the upper part of buildings over the footpath (1).

*R. S. Wright*, for the appellant.—The magistrate was wrong in dismissing this information. The facts shew that there was a nuisance or obstruction by the interference with the access of light and air such as to make the respondents liable.

The respondents did not appear.

*Cur. adv. vult.*

The judgment (2) of the Court (3) was delivered by

LUSH, J.—The respondents in this case were summoned for neglecting to observe the provisions and regulations contained in a local Act (5 Vict. sess. 2. c. xlv.), intituled "An Act for the promotion of the health of the inhabitants of the borough of Liverpool, and the better regulation of buildings in the said borough." The act

(1) This section will be found set out along with others in the judgment of Lush, J.

(2) The judgment was not written.

(3) Cockburn, C.J.; Lush, J.; and Manisty, J.

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complained of was the building of an oriel window of stone work, which projected over the pavement of the street to the extent of some two feet six inches; but it was proved that the window was not any nuisance or obstruction except so far as any such projection necessarily interfered with the access of light and air to the street and with the regularity of the line of buildings of the street. Under these circumstances the magistrate dismissed the information, being of opinion that the 67th section of the Building Act, to the terms of which I shall presently call attention, only prohibited projections upon or over the pavement such as would prevent free passage along it; and the question reserved to us is, whether the section in question prohibited a projection from the upper part of buildings over the footpath, even though such projection may not obstruct or rest upon any part of the building.

Now the Act in question, though intitled a sanitary Act, had, amongst other objects, the regulation of footways. The 67th section, upon which the present question turns, is one among a number of sections having reference to footways and keeping them clear. The 63rd section enacts that "no water shall be permitted to flow from any building upon the footway of any street, but all such buildings shall be drained by pipes or tunnels where practicable below the surface or flagging of the footway, and where impracticable on account of the level of the street, by channels formed in the pavement or flagging of the footway; nor shall any water be pumped up or discharged from any building upon the footway of any street, but the same, when necessary to be so pumped up and discharged in consequence of any tempest or flood, may be conveyed over or under the footway by spouts or trunks to the drain or channel of the street." The 64th section directs how that is to be carried out. The 65th section prohibits the discharge of smoke or steam from the front of buildings. The 66th section enacts that "the cellar entrances, windows or openings of all buildings to the front of any street, and the coal and other vaults under the footways of any such street,

and the entrances or openings thereto from the footway," are to be secured according to the directions of the commissioners of paving or surveyors of highways. Then comes the 67th section, which is in these terms: "And be it enacted that no projection of any kind shall be made in front of any building over or upon the pavement of any street, except for shop fronts or for doorways, and no part of such shopfront or doorway in streets under ten yards wide (measuring from house to house at right angles, with the front brick or stone work of the said buildings) shall project more than six inches, except the cornice, which may project fifteen inches; and in streets more than ten yards wide, measuring as aforesaid, no shopfront or doorway shall project more than twelve inches, except the cornice, which may project eighteen inches, the tops of such projecting cornices in no case to exceed in height more than three feet above the ceiling of such shop, and being in all cases covered with lead, copper, zinc, iron, slate, stone or other incombustible material." Then comes the following proviso: "Provided always, that it shall be lawful for any person, with the consent in writing of the council, . . . and also with the consent of the said commissioners for the better paving and sewerage of the town of Liverpool, . . . to build with, or add to . . . any building fronting any street any projecting pilaster which shall not project more than six inches, or in streets more than ten yards wide, measuring, as aforesaid, more than *twelve* inches from the perpendicular line of the front brick or stone work of the building where it fronts such street; provided also, that the erection of such pilaster shall not entitle the owner of such building at any future period to bring forward or advance the front wall of such building in a line with the front of such pilaster; and in the absence of any evidence to the contrary on the part of the owner, the presumption shall be that, save as hereby expressly allowed, the right of such owner was limited to the line of such front wall without such pilaster or cornice."

Now it was contended that the words "over or upon" the pavement apply to

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any projection at any part of a building. If, therefore, the contention be sound, any owner of premises would be prevented from having any verandah or other place erected for the most innocent purpose, such as for flowers, which extended any distance over the vertical line, and could not even put a lamp in front of his house. Such an absurd result the Legislature could never for one moment have intended. The object of the 67th section was, as it seems to me, to keep the pavements clear for passenger traffic, and to prohibit anything which was likely to cause an obstruction to passengers; the word "over" being used to prevent the intention of the statute being frustrated by projections which, though not upon a pavement, would interfere more or less with the traffic. The exceptions in favour of shopfronts and doorways under certain conditions point to the same conclusion, and shew that the Legislature never intended to prevent projections at any part of the house. We are therefore of opinion that the magistrate came to a right conclusion, and that the section in no way was intended to deal with the free passage of air, but only with the free passage of traffic along the pavement. As therefore it was proved that the projection in question did not interfere with the present use of the footpath, the information was properly dismissed, and our judgment must be for the respondents.

*Judgment for respondents.*

Solicitors—F. Venn & Son, agents for J. Rayner, Liverpool, for appellant.

[IN THE QUEEN'S BENCH DIVISION.]

1880. } TOMBS (appellant) v. MAGRATH  
May 4. } respondent).

*Volunteer Act, 1863 (26 & 27 Vict. c. 65), s. 21, sub-sect. 1—Administrative Battalion—Dismissal of Member—Commanding Officer—Regulations of 1878.*

*By the Volunteer Act, 1863, s. 21, sub-sect. 1, the commanding officer of a Volunteer corps may discharge from the corps any volunteer for breach of discipline. By sub-section 2, a volunteer belonging to a corps or administrative regiment who is guilty of misconduct while under arms or on march or duty is liable to arrest at the order of the officer then in command of the corps or regiment.*

*The appellant was a member of the W. Corps, which consisted of two companies, of which the defendant was captain, commandant and commanding officer. Whilst the two companies were assembled in camp, they formed, together with certain other companies an administrative battalion, the whole of the companies in camp being under the command of M., the commanding officer of the first administrative battalion. On parade of the appellant's corps, forming part of the administrative battalion in camp, the appellant was dismissed from the corps for breach of discipline by the respondent, who was present superintending the company drill of the corps:—Held, that the respondent was the commanding officer on the occasion when he dismissed the appellant within the meaning of section 21 of the Volunteer Act, 1863, and that the power of the commanding officer of the administrative regiment was limited to arrest for the period during which the regiment was collectively under his control.*

CASE stated under 20 & 21 Vict. c. 43.

An information was preferred by the respondent against the appellant under the Volunteer Act, 1863 (26 & 27 Vict. c. 65), s. 27, for having on the 1st day of July, 1879, at Leamington, unlawfully failed, after demand, to pay a certain subscription due from the appellant (as a late non-efficient member) to the funds of the 10th Warwickshire Rifle Volunteer

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Corps, amounting to 1*l.* 5*s.*, contrary to the provisions of the Act.

It was proved that the appellant for some time previous to the 14th day of June, 1879, when the Administrative Battalion went into camp, and on the 19th day of June, 1879, was a member of the above mentioned corps, which consisted of two companies, of which the respondent was captain, commandant and commanding officer, and whose head quarters were at Leamington. On the 19th of June, 1879, the two companies were assembled in camp, in Stoneleigh Park, Warwickshire, forming, together with the other companies, the 1st administrative battalion of the Warwickshire Rifle Volunteers, the whole of the companies in camp being under the command of Lieutenant-Colonel Machen, the commanding officer of the said administrative battalion. On parade of the 10th Warwickshire Rifle Volunteer Corps, forming a part of the said administrative battalion in camp on the 19th of June, 1879, the respondent being present and superintending the company drill of the corps, the appellant, for some breach of discipline, was dismissed from the corps by the respondent.

It was admitted that there was due from the appellant if properly dismissed by the respondent, the sum of 1*l.* 5*s.* as subscription to the corps for 1879.

The justices made an order for the payment of the above sum, but reserved for the opinion of this Court the question whether the respondent was the commanding officer of the corps on the occasion when he dismissed the appellant, within the meaning of section 21 of the Volunteer Act, 1863, and the Volunteer Regulations, 1878 (1).

(1) Section 21 of 26 & 27 Vict. c. 75 (Volunteer Act, 1863), enacts that:—"With respect to the discipline of officers (other than officers of the Volunteer Permanent Staff) and volunteers, the following provisions shall take effect and be in force while they are not on actual military service:—

"1. The commanding officer of a volunteer corps may discharge from the corps any volunteer, and strike him out of the muster roll, either for disobedience of orders by him while doing any

*Underhill (Stubbins with him)*, for the appellant.—This information ought to

military duty with his corps, or for neglect of duty, or misconduct by him, as a member of the corps or for other sufficient cause, the existence and sufficiency of such causes respectively to be judged of by the commanding officer. The volunteer so discharged shall, nevertheless, be liable to deliver up in good order, fair wear and tear only excepted, all arms, clothing and appointments, being public property or property of his corps, issued to him, and to pay all money due or becoming due by him, under the rules of his corps, either before or at the time or by reason of his discharge. But nothing herein shall prevent Her Majesty from signifying her pleasure in such manner, and giving such directions with respect to any such case of discharge, as to Her Majesty may appear just and proper.

"2. If any such officer as aforesaid, or any volunteer, while under arms or on march or duty, with the corps or administrative regiment to which he belongs or any portion thereof, or while engaged in any military exercise or drill with such corps or regiment, or any portion thereof, or while wearing the clothing or accoutrements of such corps or regiment, and going to or returning from any place of exercise or assembly of such corps or regiment, disobeys any lawful order of any officer under whose command he then is, or is guilty of misconduct, the officer then in command of the corps or regiment or any superior officer under whose command the corps or regiment then is, may order the offender, if an officer, into arrest, and if not an officer, into the custody of any volunteer belonging to the corps or regiment, or of any non-commissioned officer of the volunteer permanent staff, but so that the offender be not kept in such arrest or custody longer than during the time of the corps or regiment, or such portion thereof as aforesaid, then remaining under arms, or on march or duty, or assembled or continuing engaged in any such military exercise or drill as aforesaid."

Section 27 says:—"If any person belonging or having belonged to a volunteer corps or administrative regiment neglects or refuses to pay any money subscribed or undertaken to be paid by him towards any of the funds or expenses of such corps or regiment . . . such money or fine shall (without prejudice to any other remedy) be recoverable from him, with costs, at any time within twelve months after the same becomes due and payable, as a penalty under this Act is recoverable."

*Tombs v. Magrath, Q.B.*

have been dismissed, inasmuch as the respondent was not the commanding

By paragraph 63 of the Regulations for the Volunteer Force, 1878:—"Whenever it is practicable, corps of volunteers, which are not of sufficient strength to constitute by themselves a regiment, brigade or battalion, are united with others of the same arm to form an administrative regiment, brigade or battalion, herein called an administrative regiment."

By paragraph 64:—"The object of this administrative organisation is to unite separate corps under a common head, to secure uniformity of drill among them, and to afford them the advantage of the instruction and assistance of an adjutant; but it is not intended to interfere with their constitution or financial arrangements, with the operation of their respective rules, or with the powers specially conferred on their commanding officers by Act of Parliament, or to require them to meet together for united drill in ordinary times except with their own consent."

By paragraph 73:—"Subject to the powers conferred by the law upon the commanding officer of each corps, the officer commanding an administrative regiment will have the general charge of the drill and instruction of the several corps under his command. He will inspect them from time to time, and will take notice of, and, if necessary, report any infraction of the provisions of the law, or of the orders or regulations of the Secretary of State. He will also be responsible that uniformity in drill is preserved throughout the force under his command. When present at the drill or parade of any of the corps, he will invariably be in command."

By paragraph 74:—"No officer of a corps forming part of an administrative regiment has any authority over the other corps of which it is composed in consequence of their administrative union; but whenever the several corps, or any number of them, meet together for drill, the senior officer present assumes the command."

By paragraph 427:—"When a volunteer has been dismissed for offences in uniform, a notification of the fact, with the cause of dismissal, will be inserted in regimental orders."

By paragraph 878:—"Each corps of volunteers will be inspected annually, and the presence of each man at the inspection (unless he shall have been enrolled subsequently to the date of inspection, or shall be absent on leave specially granted by the commanding officer, or through sickness duly certified) is necessary to qualify him for efficiency under Her Majesty's Order in Council."

officer of the corps within the meaning of the Volunteer Act, 1863, section 21, and the Volunteer Regulations at the time when the appellant was dismissed from the corps. The appellant's corps being joined with other corps in camp, was under the command of Lieutenant-Colonel Machen, who, as commanding officer, had alone the power to dismiss the appellant. They referred to 26 & 27 Vict. c. 75. ss. 21, 27, and to the Volunteer Regulations, 1878.

*Biggam*, for the respondent, was not called upon to argue.

LUSH, J.—I am of opinion that the decision arrived at by the magistrates was right, and that consequently this appeal must be dismissed. The appellant was sued in the form of an information for the non-payment of a subscription due from him as a late non-efficient member to the fund of the 10th Warwickshire Rifle Volunteer Corps. It is admitted that the appellant's liability to pay this subscription depends on the question whether he was properly dismissed. Now the facts are as follows:—The appellant was a member of the 10th Warwickshire Volunteer Corps, which consisted of two companies, of which the respondent was captain, commandant and commanding officer, and whose headquarters were at Leamington. In June last, whilst the appellant was a member of the corps, the two companies were assembled in camp and formed, together with certain other companies, the first administrative battalion of the Warwickshire Rifle Volunteers, the whole of the companies in camp being under the command of Lieutenant-Colonel Machen, the commanding officer of the administrative battalion. On parade of the 10th Warwickshire Rifle Volunteer Corps which formed a part of the administrative battalion in camp, the appellant was dismissed by the respondent, who was at that time present superintending the company drill of the corps, for some breach of discipline. The objection taken is that as the corps to which the appellant belonged was joined with other corps in camp, Lieutenant-Colonel Machen was the commanding officer at that time, and

*Tombs v. Magrath, Q.B.*

consequently that he was the only person entitled to dismiss the appellant. Now I confess it appears to me very plain that, on the construction of the statute to which our attention has been called, and also the regulations, the sole power to dismiss was vested in the captain of the corps. The commanding officer of the corps, alluded to in 26 & 27 Vict. c. 75. s. 21, is undoubtedly the respondent. The commanding officer of the administrative regiment has no power save of arrest at the period during which the regiment is collecting under his control, and the power of dismissal is, by section 21, sub-section 1, expressly given to the commanding officer of the corps and him only. The regulations shew that the commanding officer of a regiment has nothing to do with the constitution of the corps, but is responsible only for their good conduct during drill. Consequently our judgment must be for the respondent.

FIELD, J.—I am of the same opinion. The only question before us is whether the appellant was properly dismissed. He was a member of a company forming with another company a corps, and it is indisputable that the respondent was the commanding officer of that corps. Therefore, unless under exceptional circumstances, it must be conceded that the respondent was the person properly authorised to dismiss. The lieutenant-colonel had no authority to discharge. His power is limited to that of arrest. For the performance of certain duties the lieutenant-colonel was doubtless the commanding officer, but I see nothing to take away from the commanding officer of the corps the duty imposed upon him by section 21, sub-section 1 of the Act of 1863.

*Appeal dismissed.*

Solicitors—Field, Roscoe & Co., agents for Bodington, Warwick, for appellant; Burton & Co., agents for Overell & Son, Leamington, for respondent.

[IN THE QUEEN'S BENCH DIVISION.]  
1880. } HORDER (appellant) v. SCOTT  
May 4. } (respondent).

*Sale of Food and Drugs Act, 1875, ss. 6, 12, 13—Adulterated Article—Purchaser—Inspector acting by Deputy—Information.*

The respondent was summoned upon an information laid by the appellant, the inspector appointed under the *Sale of Food and Drugs Act, 1875* (38 & 39 Vict. c. 63), for having sold to the prejudice of one Toy, certain coffee which was not of the nature and quality of the article demanded by such purchaser, contrary to the provisions of section 6.

It appeared that Toy went as the appellant's assistant, and asked for some best coffee for which he paid. On being analysed, the coffee purchased was found to contain a large proportion of chicory. The justices dismissed the information on the ground, amongst others, that the proceeding having been instituted by the appellant in his official capacity, he and not Toy should have personally purchased the article and dealt with the same:—Held upon the above facts, that Toy might be treated as an ordinary purchaser, and that the justices had acted wrongly in entertaining the objection.

CASE stated under 20 & 21 Vict. c. 43.

At a petty sessions of the peace holden at Wolverhampton, on the 10th of November, 1879, the respondent was charged in and by a certain summons (issued upon an information laid by the appellant, one of the inspectors of weights and measures for the county of Stafford and also the inspector duly nominated and appointed under the *Sale of Food and Drugs Act, 1875*, for the said county), for that the respondent on Saturday, the 27th day of September, at Bushby, in the said county, did unlawfully sell to the prejudice of one Samuel Toy, the purchaser, a certain article of food, to wit, coffee which was not of the nature, substance and quality of the article demanded by such purchaser, contrary to 38 & 39 Vict. c. 63. s. 6. It was proved before the justices that Toy was the assistant to the appellant under the *Food and Drugs Act*, and that acting on

*Horder v. Scott, Q.B.*

behalf of the appellant he went to the respondent's shop and purchased two ounces of coffee from the respondent. The respondent asked if the best was wanted. Toy replied in the affirmative, and was charged 2½d. for it. Toy then told the respondent that it was to be analysed by the county analyst, and divided the sample into three parts, leaving one part sealed and labelled and numbered. Before leaving the shop the respondent mentioned that it was a mixture of coffee and chicory. The appellant was not present when the purchase was made, but the sample was delivered to him, and by him sent to the analyst.

The appellant was called to prove the receipt of the sample from Toy on the day of the purchase, one part of which was delivered to the county analyst, and was found to contain forty-one per cent. of chicory.

The justices determined that (1) as the proceedings were instituted by the appellant in his official capacity as inspector, and he had laid the information, he, and not Toy, should have personally purchased the article and dealt with the same pursuant to section 14 of the Act; (2) that as Samuel Toy was the purchaser and so described in the summons, he and not the appellant should, pursuant to the requirements of section 14, have submitted the article purchased to the county analyst, and should have laid the information against the respondent; (3) that the mode in which the article purchased was dealt with by Toy was not in accordance with either sections 12 or 14 of the Act (1).

(1) By 38 & 39 Vict. c. 63.—“ No person shall sell to the prejudice of the purchaser any article of food or any drug which is not of the nature, substance and quality of the article demanded by such purchaser, under a penalty not exceeding 20*l*.”

By section 8, articles of food may in certain cases be mixed with any matter or ingredient not injurious to health, “ if at the time of delivering such article the seller shall supply to the person receiving the same a notice, by a label distinctly and legibly written or printed on or with the article, to the effect that the same is mixed.”

By section 12, “ any purchaser of an article of

Accordingly they dismissed the summons. The question of law was whether or not the justices were correct in their determination.

*A. R. Jelf*, for the appellant.—The real question here is whether an inspector can act by deputy; the justices thought he could not, and also took objection to the form of the information. The offence is committed under 38 & 39 Vict. c. 63. s. 6; it is submitted that the justices adopted a mistaken view of the statute. [He cited sections 12, 13 and 14 and was then stopped by the Court.]

The respondent did not appear.

LUSH, J.—I think that the justices arrived at a wrong conclusion and that this case must be remitted in order that it may be determined upon its merits. The information was against the seller of an article for selling as best coffee, what was found on an analysis to contain a very large proportion of chicory, to the prejudice of one Samuel Toy the purchaser. To act thus is made an offence under the Sale of Food and Drugs Act, 1875. It is

food is entitled upon payment of a certain fee to have such article analysed, and to receive from the analyst a certificate of the result of the analysis.”

By section 13, “ An inspector of weights and measures may purchase any sample of food at the cost of the local authority, suspected by him to have been sold contrary to the provisions of the Act, and have it analysed, and a certificate is to be given by the analyst specifying the result of the analysis.”

By section 14.—“ The person purchasing any article with the intention of submitting the same to analysis shall, after the purchase shall have been completed, forthwith notify to the seller or his agent selling the article his intention to have the same analysed by the public analyst, and shall offer to divide the article into three parts, to be then and there separated, and each to be marked and sealed or fastened up in such manner as its nature will permit, and shall, if required to do so, proceed accordingly, and shall deliver one of the parts to the seller or his agent. He shall afterwards retain one of the said parts for future comparison and submit the third part, if he deems it right to have the article analysed, to the analyst.”

*Horder v. Scott, Q.B.*

quite true that Toy was an agent of the inspector, and bought, as such agent, the article in question for the purpose of analysis. Before the Act of last session, there was a difference of opinion as to the construction to be put on certain words of the Act of 1875 between this Court and one of the Scotch Courts, but that difference is no longer of importance (2). Toy may be treated as an ordinary purchaser, who went and ordered some best coffee and received an article which turned out to be a mixture of coffee and chicory.

Under those circumstances the justices dismissed the information, for reasons which appear to me to be quite erroneous. The first ground on which the information was dismissed was, that as the proceedings had been instituted by the inspector in his official capacity, and he had laid the information, he should have personally purchased the article. But it really does not in the least signify whether his was the hand that purchased it or that of his assistant. The second ground on which the information was dismissed was, that Toy, being the purchaser, should have himself submitted the article purchased to the county analyst, and should have laid the information against the respondent. There, again, I think the justices were wrong. The 12th section of the Sale of Food and Drugs Act, 1875, empowered "any purchaser of an article of food" to have it analysed upon payment of a certain fee, and to receive from the analyst a certificate of the result of his analysis. The 13th section permits an inspector to procure any sample of food suspected to have been sold contrary to the provisions of the Act and to have it analysed at the cost of the local authority, and have a certificate of such analysis given to him. That is only a mode of ascertaining the genuineness of an article, and does not go to the substance of the offence. The inspector is authorised to do nothing but what an ordinary purchaser would have the right

to do. It merely provides a manner in which the provision of the statute is to be carried out in certain cases. The third and last objection taken by the justices was, that the mode in which the article purchased was dealt with was irregular and not in accordance with either the 12th or 14th section of the Acts. I confess I don't at all understand the meaning of the third objection. The evidence was that the sample was delivered to the inspector, and by him forwarded to the analyst. But what does that signify? The 12th section only intended to point at a mode of ascertaining whether an article of food was genuine or not; and the provision contained in the 14th section seems to have been substantially fulfilled. The case really lies in a nutshell; a person goes into a shop to buy some coffee; he asks, and pays, for best coffee and gets a mixture of coffee and chicory. Then the only defence the seller makes is that he informed the purchaser before leaving the shop that there was some chicory mixed with the coffee. But a mere verbal notice is not sufficient to bring the seller within the protecting clauses of the Act, the 7th section requiring a distinct notice by a written or printed label to the effect that the article sold is a mixture. On these grounds I am of opinion that the objections taken by the justices are not tenable, and that the case must be remitted back to the justices to be decided on the merits.

FIELD, J.—I am entirely of the same opinion. The inspector appointed under the statute must have multifarious duties; and if we were to hold that these objections were valid it would greatly lessen the benefit intended to be conferred by the Act.

*Case remitted.*

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Solicitors—Thos. White & Sons, agents for Hand, Blakiston & Co., Stafford, for appellant.

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(2) See *Hoyle v. Hitchman* (48 Law J. Rep. M.C. 97) differing from *Davidson v. McLeod* (Court of Justiciary), 4th sess. vol. v. part 22, page 1, and also 42 & 43 Vict. c. 61. s. 2.

[IN THE QUEEN'S BENCH DIVISION.]

1880. } THE QUEEN v. PEARCE AND  
March 22. } OTHERS.

*Statute 4 & 5 Will. 4. c. 76. s. 38—  
Guardians ex officio—County Justices—  
County of a Town.*

*By 4 & 5 Will. 4. c. 76. s. 38 every justice of the peace residing in any parish and acting for the county, riding or division in which a union is situated, is made an ex officio guardian, and is entitled to act as such:—*

*Held, that the term "county" in the above section included the county of a town.*

This was an information in the nature of a *quo warranto*, calling upon certain justices for the borough of Poole to shew cause why they exercised the office of poor law guardians for the Poole Union.

The proceedings arose out of an election to fill the office of collector of poor rates for the parish of St. James, Poole, by the guardians of the Poole Union, for which office the relator was a candidate. The question raised was whether the borough justices for the town and county of Poole had the right to vote at the elections as an *ex officio* magistrate, it being admitted by the relator that his right to be declared duly elected to the office could only be established in the event of their having no such power.

At the election in question a majority of the elected guardians voted in favour of the relator, but eleven of the justices for the borough of Poole claimed to be entitled to vote as *ex officio* guardians by virtue of being acting magistrates for the county, riding or division in which the union was situated, pursuant to 4 & 5 Will. 4. c. 76. s. 38.

It appeared that under an old charter of Elizabeth, the town of Poole was constituted an entire county, distinct and altogether separate from the county of Dorset, under the title of the town and county of Poole, with a separate sheriff and Court of quarter sessions presided over by a recorder. The area of the corporate town and county of Poole is co-extensive with the parish of St. James's which is small compared with the area of the municipal borough of Poole, and still

more so compared with the area of the Union of Poole, which was constituted in 1835 and included several other parishes beyond the limits of the municipal borough and situate in the county of Dorset.

It appeared from the affidavits that there was only one justice for the county of Dorset who resided within the district of the Poole Union.

Arthur Charles (Budge with him), shewed cause against the rule.—The sole question is whether the justices for the county of the town of Poole had a right to vote as *ex officio* guardians at the election under 4 & 5 Will. 4. c. 76. s. 38, by which any justice of the peace residing in any parish forming part of a union and "acting for the county, riding or division in which the same shall be situated shall be an *ex officio* guardian, . . . and shall, until such board shall be duly elected and constituted . . . receive and carry into effect the rules, &c. . . . and after such board shall be elected and constituted . . . every such justice shall *ex officio* be and be entitled, if he think fit, to act as a member of such board in addition to and in like manner as such elected guardians." The interpretation clause (section 50) says, that the words "justice or justices of the peace" shall be construed to include "justices of the peace of any county, division of a county, riding, borough, liberty, division of a liberty, precinct, county of a city, county of a town, cinque port, or town corporate unless where otherwise provided by this Act." It is contended on the other side that section 38 does otherwise provide, which has given rise to the present controversy. They cited *Evans v. Stevens* (1).

*Wills* and *Pollard* supported the rule.—The words used in the 38th section, "justice of the peace acting for any county, riding or division," are words of limitation to the general meaning under the interpretation clause. These words were intended to apply only to counties at large and not to counties of towns; consequently the justices in ques-

(1) 4 Term Rep. 224.

*The Queen v. Pearce, Q.B.*

tion had no right to vote at the election of guardians for the Poole Union.

COCKBURN, C.J.—I am clearly of opinion that this rule must be discharged. The interpretation clause does not apply at all; it was only inserted to qualify and control the term “justice of the peace,” where those words occur without anything more and without reference to their jurisdiction. We are left, therefore, to interpret section 38 without reference to the interpretation clause. It has been contended that the word county is used in the sense of a county capable of having ridings or divisions and must be so held as distinguished from a county of a town. But I think that the words riding or division have been used for the purpose of presenting a possible contention that “riding or division” were not included in the term “county.” Now when we have to interpret the term “county” along with the words “riding and division,” what good reason is there for holding that a “county of a town” is not a “county?” The object of the section was to give justices residing within any of the parishes forming part of a union a share in the management of the affairs of the union. I see nothing to cut down the meaning of the term “county” as used in section 38, and consequently these gentlemen were, in my judgment, well qualified to vote at the election in question.

LUSH, J.—I am of the same opinion. If it were not for the interpretation clause no difficulty whatever would have arisen. Now an interpretation clause can only be used to interpret words which are ambiguous or equivocal, not to upset clear language. The object of the 38th section was to provide for the supply of persons to act as guardians during any period when there would otherwise have been none. It contemplates the failure from one cause or another of the elected guardians, in which case, but for the supply of *ex officio* guardians, there would be no administrators of the poor law in existence. Now what would be the consequence of our adopting the construction contended for? Why, that if the supply of the elected guardians failed there would be no person left to transact their busi-

ness. It so happens that in this case there is one justice for the county of Dorset living within the district of the Poole Union, but had there been no such person there would, according to the relator's construction, be nobody within the county of the town of Poole who was qualified to administer the poor law pending the election of a new set of guardians. If the word “justices” alone had been used in the section it would, of course, have included a justice of Devonshire; hence the words “and acting for the county, riding or division in which a union is situated.” These words qualify the words of the interpretation clause in order that only those who were justices of the county within whose precincts the Union was situated should be *ex officio* guardians and qualified to act as such.

BOWEN, J.—I am of the same opinion.

*Rule discharged.*

Solicitors—Peacock & Goddard, agents for H. T. Trevanion Poole, for relator; Crowder, Anstie & Vizard, agents for P. E. L. Boyle, Poole, for defendants.

[IN THE COMMON PLEAS DIVISION.]

1880. } ARKWRIGHT (*appellant*) v.  
Feb. 27. } EVANS (*respondent*).

*Mines—Metalliferous Mines Regulation Act, 1872 (35 & 36 Vict. c. 77)—Fencing Shaft of Abandoned Mine—Owner—Person interested in Minerals.*

*The appellant was lessee of a lead mine and of all the duties arising therefrom, under a lease from the Duchy of Lancaster, by which he had to pay to the duchy, by way of rent, all he might annually receive in respect of the mine, with an additional yearly rent of five shillings. The mine was demised to him subject to a custom by which all the subjects of the realm have a right to search there for veins of lead ore, upon paying certain duties, and the appellant had no pecuniary interest in the mine or in the minerals thereof.*

*Section 13 of the Metalliferous Mines*

*Arkwright v. Evans, C.P.*

*Regulation Act, 1872 (35 & 36 Vict. c. 77), requires the owner of an abandoned mine to which the Act applies and every other person interested in the minerals of the mine, to cause the top of the shaft to be fenced, and section 41 states that the term "owner" means any person "who is the immediate proprietor, or lessee, or occupier of a mine," "and does not include a person who merely receives a royalty rent or fine from a mine, or is merely the proprietor of a mine subject to any lease, grant or license for the working thereof, or is merely the owner of the soil and not interested in the minerals of the mine":—*

*Held, that the appellant was neither owner of the mine nor a person interested in its minerals within the meaning of section 13, and, therefore, upon the mine being abandoned he was not liable to cause the top of its shaft to be fenced as required by that section.*

*Quære, whether the statute applies to a mine which belongs to the Duchy of Lancaster.*

CASE stated by the justices of Derby under 20 & 21 Vict. c. 43.

The appellant was convicted by the said justices and fined 1s. and costs of the offence mentioned in an information preferred against him, that he being a person interested in the minerals of the mines at Ible Wood, in the parish of Wirksworth in the said county, did fail or neglect to cause the tops of the shafts from the surface of the said mines to be kept securely fenced for the prevention of accidents contrary to the Metalliferous Mines Regulation Act, 1872.

The case as stated was as follows:—

Upon the hearing of the said information it was proved on the part of the respondent and found as a fact that the top of the shaft of a mine in Ible Wood in the parish of Wirksworth, was not fenced as in the said information is mentioned.

It was also proved or admitted that the mine in question had been abandoned for many years, and that such mine was within fifty yards of a public footpath.

It was also proved or admitted that the appellant was the lessee under the Duchy of Lancaster of the mineral dues

payable in respect of the minerals arising from all the mines within the wapentake of Wirksworth, which comprises the mine in question, for a term of twenty-one years, commencing on the 25th of March, 1879, but that he had to account for and pay over to the duchy all sums received in respect of such mineral dues, and that the appellant had no pecuniary interest in the said mines or in the minerals thereof.

A copy of the said lease was annexed to and to be taken to form part of the case (1).

(1) The copy of the lease referred to in the case was that of a lease made on the 9th of June, 1879, between the Queen's Most Excellent Majesty of the one part and Frederick Charles Arkwright, therein described, of the other part. By it Her Majesty, by and with the advice of her Chancellor and Council of her Duchy of Lancaster, demised unto the said Frederick Charles Arkwright, his executors, administrators and assigns, "all those mines of lead with their appurtenances within the soke and wapentake of Wirksworth, parcel of Her Majesty's Duchy of Lancaster in the county of Derby, subject to the custom of working the same," "all those duties called lot and cope within the said soke and wapentake of Wirksworth," and "all and all manner of perquisites and profits arising and growing, happening or becoming due or payable or appertaining of, from or to the Barmote Courts within the said soke and wapentake." To hold the same from the 25th of March, 1879, for the term of twenty-one years. The rent reserved was the following: "the yearly rent of five shillings and in addition thereto a sum by way of further rent equal to the full amount received in each year by the lessee from or in respect of the demised premises or by reason of the demise hereinbefore made thereof to be payable on the 25th day of March and the 29th day of September in each year without any deduction except such deductions as are specified in clause 1 of the fourth schedule." The clause 1 of the fourth schedule was the following:

"1. The lessee may from time to time deduct from the reserved rents—

*Arkwright v. Evans, C.P.*

It was thereupon contended by the appellant's solicitor that the appellant having no pecuniary interest in the minerals of the said mines was not a person interested in the minerals of the said mines within the meaning of section 13 of the Metalliferous Mines Regulation Act, 1872, and therefore not liable to fence the top of the said shaft. The appellant's solicitor also contended that if the justices considered the appellant

"(1) Any sum or sums not exceeding in the whole in any one half-year 100*l.* which the lessee may, during the same half year, have expended in respect of salary to the steward of the said soke and wapentake, or the barmaster of the said soke and wapentake, or either of them and in respect of the holding of the said barmote Courts.

"(2) Any sums which the lessee shall, during the half year for which the reserved rents are payable, have properly paid under the provisions of clause 2 of the third schedule." The third schedule (which contained the lessee's covenants) stated in clause 2 that "the lessee shall during the term pay all land tax, tithe, quit rent, sewers rates, and all other taxes, rates and assessments whatsoever, parliamentary, parochial, extraordinary or otherwise, for the time being charged, assessed or imposed on the demised premises, or any part thereof, or on the reserved rents, or any of them."

Amongst the covenants by the lessee there was one that the lessee should, during the term, use all diligence to collect and get in all duties and sums payable to him under and by virtue of the "Derbyshire Mining Customs and Mineral Courts Act, 1852," and under and by virtue of this lease. And another that he should keep books of account in which should be entered all such sums as should be received by him in respect of the demised premises and all sums paid by him in respect thereof, which he might be entitled to deduct from the reserved rent as provided by the said clause 1 of the fourth schedule, and should at all times when required produce such books for the inspection of any person who should be authorised to inspect the same by Her Majesty or by the Chancellor of the Duchy.

a person interested in the minerals of the said mines within the meaning of the said section, and as such liable to fence the top of the said shaft, evidence must be given that minerals were still to be found in the said mine, and no such evidence had been given, and it might be presumed that the mine had been abandoned in consequence of there being no minerals therein. The solicitor for the respondent contended that it was enough if the appellant had any interest whatever in the said mines or in the minerals thereof. That it was not necessary that the appellant should have a pecuniary interest. That it was not necessary for the respondent to prove that minerals still existed in the said mines.

The justices being of opinion that the appellant as such lessee (although having no pecuniary interest) was a person interested in the minerals of the said mine within the meaning of section 13 of the said Act gave their determination against the appellant in manner before stated.

The question of law for the opinion of the Court was whether or not, upon the evidence above stated, the said justices were justified in so convicting and fining the appellant.

*Herschell (McLeod with him)*, for the appellant.—The Duchy of Lancaster is the owner of the mines in the hundred of High Peak, Derbyshire, amongst which is the mine in question, and the working of these mines is regulated by 14 & 15 Vict. c. 94, from which statute it appears that there is a custom from time immemorial in the High Peak hundred for all the subjects of the realm to have a right to search for and dig mines or veins of lead ore there, upon paying certain duties (2). The appellant is a lessee of this mine under a lease from the Crown in right of the duchy, and by that he has it is true a right to receive all the mineral duties payable in respect of the mine, but it is only as a collector or receiver for the duchy, for he is by the lease to hand over to the duchy all he so

(2) See the recital to the Act and the 16th section.

*Arkwright v. Evans, C.P.*

receives in respect of the demised premises, and in addition thereto, to pay the annual rent of five shillings. He therefore has no pecuniary interest whatever in the working of the mine. How, then, does he come within section 13 of the Metalliferous Mines Regulation Act, 1872 (35 & 36 Vict. c. 67) (3), as being either "the owner of the mine or other person interested in the minerals of the mine?"

The term "owner" is defined by section 41 to mean "any person or body corporate who is the immediate proprietor, or lessee, or occupier of any mine or of any part thereof, and does not include a person or body corporate who merely receives a royalty rent or fine from a mine, or is merely the proprietor of a mine subject to any lease, grant or license for the working thereof, or is merely the owner of the soil and not interested in the minerals of the mine."

[LORD COLERIDGE, C.J.—Is not the appellant owner?]

No, and moreover to be within section 13 it is necessary, whether owner or not, that he should be interested in the minerals.

In *Evans v. Mostyn* (4) the owners had power to detain the minerals gotten until the royalty was paid, and were therefore interested in the minerals within the meaning of this 13th section. Here there is no evidence that there are any minerals in the mine, and even if there be, section 41 excludes the appellant from coming within its definition of owner.

*Dugdale*, for the respondent.—The appellant is both owner and a person interested in the minerals of the mine. The appellant clearly is lessee of the mine,

(3) Section 13 of 35 & 36 Vict. c. 77 enacts that, "Where any mine to which this Act applies is abandoned, or the working thereof discontinued, at whatever time such abandonment or discontinuance occurred, the owner thereof and every other person interested in the minerals of the mine shall cause the top of the shaft and any side entrance from the surface to be and to be kept securely fenced for the prevention of accidents."

(4) 47 Law J. Rep. M.C. 25.

and therefore, according to section 41 of the statute, fulfils the definition of the term "owner," and so is brought within section 13. It is immaterial what was the consideration for the lease, and whether it gives the appellant a pecuniary interest or not in the minerals. The lease is a distinct demise, which vests the mine and duties in the appellant, so that no one can work the mine and take out the lead without paying duties to the appellant. The Legislature, in requiring the shaft of an abandoned mine to be fenced, could not have contemplated that the owner of the mine, or person interested in its mineral, had any pecuniary interest therein, and it cannot be necessary that he should have such an interest in order to make him liable to do what the Act requires for the protection of the public. There was no evidence before the justices that there were no minerals in the mine, and the appellant being lessee of the mine, must be interested in whatever minerals there are in the mine.

[LINDLEY, J.—Is it clear that the Metalliferous Mines Regulation Act, 1872, applies at all to Royal mines?]

If neither the Crown nor the appellant be bound to fence, then no one is bound.

*Herschell* replied.

LORD COLERIDGE, C.J.—I am of opinion that our judgment should be for the appellant, and that the true construction of this Act of Parliament does not include a person in the position of the appellant. Looking at the words and provisions of the Act, I think that the peculiar custom of the High Peak was not contemplated when the Act was passed, and certainly the 14 & 15 Vict. c. 94 is carefully left out of the Act, and is nowhere alluded to in it. We have, therefore, to apply the words of an Act of Parliament to a subject matter which the Act did not contemplate.

I pass over the question whether the Metalliferous Mines Regulation Act, 1872, does or not apply to mines the ownership of which is in the Crown in right of the duchy, and I will assume that it does, but I do not find in it words which will include a person in the posi-

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tion of the appellant. In one sense the appellant is lessee of these mines, but only in a technical and unusual sense. It is true that there are in the lease words of demise, yet, when the whole of it is looked at, the appellant is much more like a receiver than a lessee. The Crown demises the mines to him, and also all the dues and royalties, and everything that comes from the mines, but what he has to pay for this demise is all that he receives. He is to pay all the rents and royalties which he receives subject to certain deductions, which are those which, if the Crown had not demised, the Crown would have had to pay; so that the lessee stands in the place of the Crown, and the whole of the rent is paid to the Crown. Does that bring the appellant within the meaning of the 41st section? Does it make him an "owner" or a "person" interested in the minerals of the mine? The more unfavourable mode for the appellant is to try whether he can be made out to be "owner" within the meaning of the Act rather than whether he can be regarded as interested in the mine; and I think that that is the proper mode of looking at the question, for the Act says, "the owner and any other person interested in the minerals of the mine." It does not, as it appears to me, distinguish the one from the other, and treat "owner" as one class and "person interested" as another class, but it treats both as interested in the minerals. Therefore, the question is whether the appellant can be said to come within the words "owner interested in the minerals of the mine." Now the 41st section enacts that the term "owner," when used in relation to any mine, means any person or body corporate who is the "immediate proprietor" (the appellant is clearly not the immediate proprietor of this mine) "or lessee" (in one sense he is the lessee, because he has a lease of the mine) "or occupier." He is not the occupier, though probably he is the lessee. But it is not enough that he fulfil that part of the interpretation clause; he must fulfil the whole of its conditions to be affected by it; and the clause goes on to say that the word owner "does not include a person or

body corporate who merely receives a royalty, rent or fine from a mine, or is merely the proprietor of a mine subject to any lease, grant or license for the working thereof, or is merely the owner of the soil, and not interested in the minerals of the mine." Now a person or body corporate in this second part of the section must be taken as equally extensive with "person or body corporate" in the first part of the section, and if "a person or body corporate" in the first part includes a lessee, so a person or body corporate may be a lessee in the second part; but then, if he is a person who, being a lessee, "merely receives a royalty, rent or fine from a mine," he is not an owner within the meaning of the first part of the section by the express words of the section itself. It appears to me that that is exactly the appellant's position. He is a lessee of the mine, but a lessee who merely receives a royalty, rent or fine from the mine, and that does not make him owner in the sense in which it is sought to make him. Moreover, it seems to me that the appellant is placed by the duchy exactly in the position of the duchy, and the duchy are the owners of the soil, and if the lease parts with everything that the duchy has to part with for twenty-one years, then he is also merely owner of the soil, and that will not bring him within the first part of the 41st section if he has no other interest in the mine. It is said that he has the right of working it, but he has that right only in common with all other subjects of the realm; and the 14 & 15 Vict. c. 94 shews that, and that it is a right not by statute, but by immemorial custom. Therefore, the appellant, if he did dig for lead, would not do so under his lease, for he would have no better right as lessee to do so than any one in this Court who might choose to go and dig in this mine in accordance with the custom. I think, therefore, that he is not the owner in any sense which would bring him within the words of this Act. It seems to me, as I have already said, that the more unfavourable mode to the appellant was to try whether he was owner within the meaning of the Act, but it has been said that, if not owner,

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he is interested in the minerals of the mine. Now I incline to think that we must assume that there are some minerals in the mine if it were worked (though this is not affirmatively proved); but the mine is not worked, and is an abandoned mine. However, if, instead of being abandoned, the mine were being worked and were full of lead, I fail to see that the appellant would be interested in the minerals in the sense intended by the Act; for as regards the right of digging and searching for lead, he would have no better right than any other subject of the Queen, and he would be interested only, if at all, in the dues; but though in form the lease is a demise of the dues, in substance it makes him only a receiver of them, for he has to hand over all the dues to the duchy when he receives them. I think, therefore, that neither upon the ground of being owner nor upon the ground of being interested in the minerals is the appellant within the terms of the Act. Probably the peculiar relation of the duchy and of the subjects of the realm, and such lessees as the appellant in the present case, were not in the contemplation of the Legislature when the Metalliferous Mines Regulation Act, 1872, was passed; at all events, the position of such a person as the appellant, as a middle man between the duchy and those who have the right of digging for minerals, namely, all the subjects of the realm, has not been defined by this Act. Therefore I am of opinion that the appellant is not brought within the words of the Act, and that the decision of the magistrates must be reversed.

LINDLEY, J.—I am of the same opinion. The appellant was summoned for not causing the top of the shaft of an abandoned mine to be securely fenced. The appellant is only a lessee of mines of lead. The case does not say that the mine in question is an old lead mine, or that there is or is not lead in it, and it may, for aught that appears to the contrary, be any other mine, when the appellant would have nothing to do with it. I will assume, however, that it is a mine of which the appellant would be lessee

under his lease. Then let us first understand the effect of this lease, which is a peculiar one. The lease is a demise from the Crown to the appellant of all the mines within the wapentake of Wirksworth, subject to the right of working the same; and the peculiarity of this lease is that the lessee, the appellant, has to hand over to the Crown all that he gets under it, and he has no pecuniary benefit from it whatever. Supposing, for instance, the 14 & 15 Vict. c. 94 were repealed, he would still be the lessee of these mines, and for that he pays a rent of 5s. a year. Technically he is lessee, and has, I presume, the legal estate, but instead of being lessee in the ordinary sense, he is really only a receiver and agent for the Crown. If he were a mere agent he would of course be liable to be dismissed, but by reason of the lease he has an interest in the mines, and for that he pays a rent of 5s. a year, and so cannot be dismissed as a common agent or receiver, and that, for aught I know, may be the explanation of reserving such rent of 5s. a year.

Now let us consider whether, that being his position under the lease, he is an owner or a person interested in the minerals within the meaning of the Metalliferous Mines Regulation Act, 1872. He has, so far as I can see, no interest whatever in the minerals except so far as he is lessee. Then the question is whether he is "owner" within the meaning of section 41. I assume that the mine is a lead mine, though that is not so found in the case. Then, being in some sense a lessee thereof, he would come within the first part of that section, but being a lessee in the sense only which I have before mentioned, he comes within the negative part of that section, which says that "the term owner does not include a person or body corporate who merely receives a royalty, rent or fine from a mine, or is merely the proprietor of a mine subject to any lease, grant or license for the working thereof, or is merely the owner of the soil, and not interested in the minerals of the mine." It appears to me that he is in the position of a mere owner of the soil, and that he has no interest in the minerals except that he

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has technically an interest in the dues and royalties, all of which, however, he has to hand over to the Crown after he has received them. I therefore do not think that the appellant is "owner" or "person interested" within the meaning of the Act, and that on these grounds the decision of the magistrates ought to be reversed.

*Decision reversed.*

Solicitors—F. J. & G. J. Braikenridge, agents for Richardson & Small, Burton-on-Trent, for appellant; F. T. Dubois, agent for Leech & Co., Derby, for respondent.

[CROWN CASE RESERVED.]

1880. }  
May 1. } THE QUEEN v. ROADLEY.\*

*Assault—Consent—Child of Tender Years.*

*The prisoner was indicted at Quarter Sessions for an indecent assault on a girl seven years of age. The chairman refused to allow the prisoner's counsel to address the jury on the question of the girl's consent to the prisoner's act, ruling that a child of seven years old might submit, but was incapable of giving consent in such a case:—*

*Held, that such ruling was wrong.*

*The Queen v. Read (2 Car. & K. 957; 3 Cox C. C. 266) followed.*

CASE reserved by the deputy chairman of the Leicester Quarter Sessions.

The prisoner was indicted for indecently assaulting Sarah Burton, a child of seven years old. According to the evidence given at the trial, the mother of the child, noticing that she had a discharge from her private parts, took her to a surgeon for advice, who treated the case as one of gonorrhœa. In consequence of this, inquiries were made, and the child stated at the trial that she and another child of a like age had been accustomed to ride with the prisoner in his milk cart, and that on one occasion she and the prisoner

got out of the cart and went into a yard; that there the prisoner undid his trousers and lifted up her clothes, putting his private parts against her own. The prisoner, on being examined by a surgeon, was found to be diseased, and in such a state that contact with his person might have infected the child in the manner described by the surgeon. There was no sign of penetration or of violence.

The prisoner was defended by counsel, who proposed to address the jury on the question of the child's consent to the prisoner's act. The chairman, however, refused to allow the question of consent to be put to the jury, ruling that a child of seven years old might submit, but is incapable of giving consent in such a case.

*The prisoner was convicted.*

The question reserved for the Court was the correctness or otherwise of the chairman's ruling in the case.

*Hensman* appeared for the prisoner.

*Prosser (D. Kingsford with him), for the prosecution.*

[DENMAN, J.—Is not this case concluded by the decision of this Court in *The Queen v. Read* (1) ?]

*Prosser* admitted that he was unable to distinguish the cases.

LUSH, J.—The ruling of the chairman cannot be supported.

THE COURT held that the conviction could not be sustained.

*Conviction quashed.*

Solicitors—Austen, De Gex & Candler, agents for W. N. Reeve, Leicester, for prosecution.

\* *Coram* Kelly, C.B.; Lush, J.; Denman, J.; Lopes, J.; and Bowen, J.

(1) 2 Car. & K. 957; 3 Cox, C. C. 266.

## [IN THE COURT OF APPEAL.]

(Appeal from the Queen's Bench Division.)

1880. } MELLOR (appellant) v. DENHAM  
March 18. } (respondent).\*

*Practice—Appeal*—"Criminal Cause or Matter"—*Judicature Act*, 1873 (36 & 37 Vict. c. 66), s. 47—*Elementary Education Act*, 1870 (33 & 34 Vict. c. 75), ss. 74 and 92—*School Board—Offence against By-laws*.

Section 74 of the *Elementary Education Act*, 1870, enables a school board to make by-laws for certain purposes, and, amongst them, for the purpose of imposing penalties, recoverable in a summary manner, for breach of any by-law.

Section 92 provides that any penalty recoverable summarily under the Act may be recovered before justices in manner directed by the 11 & 12 Vict. c. 43 (*Jervis' Act*), and the Acts amending the same.

Upon an information against the respondent to recover a penalty for breach of one of the by-laws of a school board, justices stated a case for the opinion of the Queen's Bench Division, who gave judgment for the respondent:—

Held, on appeal, that this judgment was in a "criminal cause or matter" within section 47 of the *Judicature Act*, 1873, and therefore that the appeal would not lie.

Appeal from a judgment of the Queen's Bench Division on a case stated by justices under 20 & 21 Vict. c. 43.

The appellant who was clerk to the Oldham School Board preferred an information against the respondent for neglecting to cause his child to attend school during the whole of the ordinary school hours as required by the by-laws of the board.

Upon the hearing, justices at petty sessions holden at Oldham dismissed the information, but stated a case for the opinion of the Queen's Bench Division, raising the question whether or not the respondent was bound to send his child, who was attending an efficient elementary school under the *Factory Acts*, to the board school under the by-laws.

\* *Coren Bramwell*, L.J.; *Beggallay*, L.J.; and *Thesiger*, L.J.

The Queen's Bench Division gave judgment for the respondent—reported 48 Law J. Rep. M.C. 113.

*A. L. Smith* and *Dicey* for the appellant.—An objection will be taken to the jurisdiction of the Court to hear this appeal on the ground that the judgment of the Queen's Bench Division was given in a criminal cause or matter within section 47 of the *Judicature Act*, 1873. It is submitted that this objection must fail. By the *Elementary Education Act*, 1870 (1), the neglecting to send a child to school is not made a "criminal matter."

The mere fact that a penalty is imposed cannot make the offence a criminal matter, and the mode in which the sum

(1) Section 74 of the *Elementary Education Act*, 1870 (33 & 34 Vict. c. 75) provides that "every school board may from time to time, with the approval of the Education Department, make by-laws for the purposes (*inter alia*) of requiring the parents of children between the ages of five and thirteen to attend school; determining the time during which such children are to attend school; and imposing penalties for the breach of any by-law." The section further provides that "any proceeding to enforce any by-law may be taken, and any penalty for the breach of any by-law may be recovered, in a summary manner," but no penalty for the breach of a by-law shall exceed such amount as with the costs will amount to 5s. for each offence.

By section 92: "Any penalty and any money which under this Act is recoverable summarily, and all proceedings under this Act which may be taken in a summary manner, may be recovered and taken before two justices in manner directed by the 11 & 12 Vict. c. 43 (*Jervis' Act*) and the Acts amending the same."

The Oldham School Board duly made by-laws under the above provisions of the *Elementary Education Act*, 1870.

By those by-laws parents of children within the ages specified in the Act were required to cause them to attend the board school, and a penalty of 5s. for neglecting to do so was imposed.

*Mellor v. Denham (App.), Q.B.*

is recoverable can make no difference—*The Attorney-General v. Moore* (2). The thing done must be looked at in order to determine whether it is criminal. They also referred to *The Queen v. Steel* (3); *The Queen v. Fletcher* (4); *Blake v. Beech* (5).

*Aspland*, for the respondent, was not heard.

BRAMWELL, L.J.—I am of opinion that this objection cannot be got over. The appellant's argument really comes to this, that this is so small an offence, so very trifling a criminality, as not to be criminal at all. One is induced to make the remark that the trifling nature of the offence affords an excellent reason why there should be no appeal to this Court. It would be a curious result if, though no appeal would lie in a serious criminal matter, one could be brought where the offence is small. It is clear to my mind that this is a criminal matter. The information is laid against the respondent for neglecting to send his child to school. That is a disobedience to the law of the land; that is, to a valid by-law which has the same force. It is therefore a crime, of the very minutest character no doubt, but still a crime. In my opinion we have no jurisdiction to hear this appeal, and it must be dismissed.

BAGGALLAY, L.J., and THESIGER, L.J., concurred.

*Appeal dismissed.*

Solicitors—Hare & Fall, for appellant; Chester & Co., agents for Ponsonby & Carlile, Oldham, for respondent.

[IN THE EXCHEQUER DIVISION.]

1879. { THE MALTON LOCAL BOARD OF  
July 2. { HEALTH (*appellants*) v. THE  
MALTON FARMERS' MANURE AND  
TRADING COMPANY, LIMITED  
(*respondents*).

*Public Health Act, 1875, s. 114—Offensive Trade*—"A Nuisance or Injurious to Health"—*Injury to Health of Sick Persons*—Nuisance not to Health.

*Under the Public Health Act, 1875, s. 114, relating to complaints by an urban sanitary authority of trades causing effluvia which are "a nuisance or injurious to the health of any of the inhabitants of the district" of such authority, complaint was made of a trade causing effluvia which were shewn to be a nuisance, but were not proved to affect health except the health of persons already ill:—Held, that injury to the health of persons already ill was injury to health within the enactment; and by STEPHEN, J., that any nuisance by effluvia from an offensive trade, although not a nuisance to health, was a nuisance within the enactment.*

CASE stated by justices under 20 & 21 Vict. c. 43.

1. A complaint was preferred by the appellants, the Local Board of Health for the district of the parliamentary borough of Malton, as the urban sanitary authority of that district, against the respondents, under section 114 of the Public Health Act, 1875 (1), charging that the

(1) The Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 114, enacts: "Where any candle-house, melting-house, melting-place or soap-house, or any slaughter-house, or any building or place for boiling offal or blood, or for boiling, burning or crushing bones, or any manufactory, building or place used for any trade, business, process or manufacture causing effluvia, is certified to any urban authority by their medical officer . . . or by any ten inhabitants of the district . . . to be a nuisance or injurious to the health of any of the inhabitants of the district, such urban authority shall direct a complaint to be made before a justice, who may summon the person by" whom "the trade

(2) 47 Law J. Rep. M.C. 33.

(3) 46 Law J. Rep. M.C. 1; Law Rep. 2 Q.B. D. 37.

(4) 46 Law J. Rep. M.C. 4; Law Rep. 2 Q.B. D. 43.

(5) 45 Law J. Rep. M.C. 111; Law Rep. 2 Ex. D. 335.

*Malton Local Board v. Malton Farmers' Manure Co., Exca.*

respondents, being the occupiers of a certain manufactory, building or place for boiling, burning and crushing bones, or used for a certain trade, business, process or manufacture causing effluvia, unlawfully carried on their business so as to be a nuisance, or so as to cause an effluvia which was a nuisance or injurious to the health of the inhabitants of the district.

2. It was proved by the appellants that the respondents were the occupiers of certain buildings in which the manufacture of artificial manures (including bone manure and the dissolving bones and coprolites with sulphuric acid, but not the boiling or burning of bones) was extensively carried on, and that during the process of manufacture, or whilst the hot product was being moved after manufacture, or from the storage of material, effluvia were thrown off in large quantities, a considerable portion of which escaped from the buildings, and had been from time to time, but not continuously, blown or carried into parts of the appellants' district, and that numerous complaints had been made of a nuisance arising therefrom to the inhabitants. And the appellants' medical officer had certified to the appellants, under the said 114th section, that the building or place occupied by the respondents was a nuisance and injurious to the health of the inhabitants of the district.

3. The evidence for the appellants went to shew that the effluvia was offensive, and had on the occasions in question materially interfered with the comfort and enjoyment of the inhabitants, and that such effluvia had penetrated into some

of the houses within the district, causing the inhabitants to close their windows; and in one or two instances nausea and vomiting were attributed to it, but the appellants' principal medical witness did not think there was anything in the vapours to make the persons who attributed vomiting to them sick. The medical officer, however, adhered to the statement in his certificate that the works caused a nuisance and an effluvia which was injurious to health; whereas the other medical witnesses for the appellants, whilst of opinion that the effluvia might make sick people worse and cause nausea, yet did not think any permanent injury to health would arise therefrom.

4. At the close of the appellants' case it was contended for the respondents that, as the medical evidence had failed to prove injuriousness to health, the justices had no power to convict the respondents, and *The Great Western Railway Company v. Bishop* (2) was cited in support of that contention.

5. For the appellants it was contended that it was not necessary to prove a nuisance injurious to health, and that the case cited, which was decided under the Nuisances Removal Act, 1855, was distinguishable.

6. The justices considered that the nuisance must be proved to be injurious to health, and that on that point the appellants' case was not made out, it being shewn that sick persons might feel it, and to a certain extent suffer from it, but not permanently. The justices accordingly dismissed the complaint.

7. The questions for the opinion of the Court were: First, was it necessary for the appellants to prove not only that a nuisance was caused by the effluvia, but also that it was injurious to the health of the inhabitants of the district? Secondly, if the Court should so decide, then did the appellants sufficiently prove the effluvia to be "injurious to health" within the meaning of the statute by evidence that some nausea which was felt was probably caused by it, and that it would make sick persons within its influence

... is carried on to appear before a Court of Summary Jurisdiction.

"The Court shall enquire into the complaint, and if it appears to the Court that the business carried on ... is a nuisance, or causes any effluvia which is a nuisance or injurious to the health of any of the inhabitants of the district, and unless it be shewn that such person has used the best practicable means for abating such nuisance, or preventing or counteracting such effluvia, the person so offending ... shall be liable to a penalty. ..."

(2) 41 Law J. Rep. M.C. 120; Law Rep. 7 Q.B. 550.

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worse, though in the opinion of the principal medical witness it was not actually injurious to health?

*Herschell (A. L. Smith with him)*, for the appellants.—First, a nuisance complained of under section 114 of the Public Health Act, 1875 (1), need not be injurious to health. This case differs from *The Great Western Railway Company v. Bishop* (2), where it was held that in section 8 of the Nuisances Removal Act, 1855 (which corresponds with part of section 91 of the Public Health Act, 1875), the words “a nuisance or injurious to health” did not include any other nuisances than such as were injurious to health. The difficulty there felt of giving a reasonable meaning to the word “nuisance,” unless restricted to a nuisance injurious to health, does not arise here, inasmuch as section 114 of the Public Health Act, 1875, is one of a group of sections dealing with offensive trades; and the word nuisance, if it needs to be limited, is, therefore, naturally to be limited to nuisances apt to be caused by offensive trades. The provision that for the purpose of founding proceedings any ten inhabitants of the urban sanitary district may certify the nuisance is a strange one, if nuisances to health are alone intended. Secondly, there was evidence of injuriousness to health. Permanent injury to health is not necessary, and injuriousness to the health of persons already ill is enough.

*Oave*, for the respondents.—The words in section 114, “a nuisance or injurious to health,” mean a nuisance to health or injurious to health. The Legislature must be taken to have had the decision in *The Great Western Railway Company v. Bishop* (2) present to its mind when it used the words upon which a construction had been put in that case. Section 112, which deals with a trade established after the passing of the Act, extends to “any noxious or offensive trade,” but section 113, which deals with trades established either before or after the passing of the Act, is confined to “noxious or injurious effects.” And section 114, dealing as it does, like section 113, with trades established either before or after the passing of the Act, is to be read as

confined, like section 113, to such trades as are not merely offensive, but noxious or injurious. The fact of sick persons being made worse is not enough to constitute injuriousness to health within the meaning of the statute.

*Herschell* was not heard in reply.

*KELLY, C.B.*—The case turns upon the construction of section 114 of the Public Health Act, 1875, which, together with sections 112 and 113, deals with offensive trades. The section enacts that upon complaint made, as there mentioned, of any place used for any trade or manufacture which causes effluvia, the justices are to enquire into the complaint, “and if it appears to” them “that the business carried on . . . is a nuisance, or causes any effluvia which is a nuisance, or injurious to the health of any of the inhabitants of the district,” then (subject to matter to which I need not refer) the person offending is to be liable to a penalty. Now, upon the point whether the nuisance was injurious to health, the facts are thus stated in the concluding words of paragraph 6 of the case. Paragraph 6 states that upon that point the appellants’ case appeared not to have been made out, “it being shewn that sick persons might feel it, and to a certain extent suffer from it, but not permanently.” And the words of the second question are, “Did the appellants sufficiently prove the effluvia to be injurious to health within the meaning of the statute by evidence that some nausea which was felt was probably caused by it, and that it would make sick persons within its influence worse, though in the opinion of the principal medical witness it was not actually injurious to health?” My clear opinion, having regard to the words of the statute, “any of the inhabitants of the district,” is that causing effluvia which have the effect of making sick persons within the district worse is injury to health within the meaning of the statute. I am of opinion, therefore, that the appeal must be allowed.

*STEPHEN, J.*—Two questions are submitted to us. To the first question I answer, No; it was not necessary for the appellants to prove that the nuisance

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caused by the effluvia was injurious to health. Sections 112 to 115 of the Act deal with offensive trades. The first question arising is, whether in the words of section 114, "a nuisance or injurious to the health of any of the inhabitants of the district," the word "or" is disjunctive, or whether, on the contrary, the word "nuisance" is to be read in connection with the words, "to the health of any of the inhabitants of the district." The respondents seek to make out that the word "nuisance" means a nuisance to health, by reference to the case of *The Great Western Railway Company v. Bishop* (2), decided upon 18 & 19 Vict. c. 121. s. 8, where the Court asked how a reasonable interpretation was to be given to the word "nuisance" save by restricting it to a nuisance to health. But there is no difficulty in restricting the meaning of the word "nuisance" in section 114 of the Public Health Act, 1875, without confining it to a nuisance to health, for it may easily be restricted to a nuisance such as offensive trades are apt to cause. I think, therefore, that whether the nuisance was or was not injurious to health, the appeal must be allowed.

As to the second of the two questions submitted to us, which I understand to be whether the suffering of sick people in health, but not permanently, was an injury to health within the meaning of the statute, I will only add to what my Lord has said, that an offensive smell which makes sick people worse must more or less interfere with the health of robust people. Both the questions submitted to us ought, I think, to be answered in favour of the appellants.

*Case remitted with the opinion of the Court.*

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Solicitors—Williamson, Hill & Co., agents for H. W. Pearson, Malton, for appellants; Ennmett & Son, agents for A. H. Jackson, Malton, for respondents.

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## TO THE REPORTS OF CASES

CONNECTED WITH

## THE DUTIES AND OFFICE OF MAGISTRATES.

MICHAELMAS 1879 TO MICHAELMAS 1880.

**ABORTION**—*attempt to procure: noxious thing*—A "noxious thing" within the 24 & 25 Vict. c. 100. ss. 58, 59, means anything which is harmful as administered, although not necessarily harmful *per se*. The prisoner, with intent to procure miscarriage, gave V. an ounce bottle of oil of juniper, telling her to take it in two doses of half an ounce each. She took one such dose, which caused violent sickness. There was evidence that the bottle given by the prisoner contained 500 to 600 drops of oil of juniper; that oil of juniper in small quantities of from five to twenty drops is commonly used without any bad effect as a diuretic, but that taken in a dose of half an ounce it acts as a powerful stimulant and irritant, and produces violent purging and vomiting, which would have a tendency to produce miscarriage by reason of the shock to the system and the straining of the parts consequent upon the purging or vomiting; and that a dose of half an ounce of oil of juniper would be a very dangerous dose to administer to a pregnant woman, and that such danger would consist in the high probability of its causing miscarriage:—*Held*, that there was evidence that the half ounce of oil of juniper was a "noxious thing" within the meaning of the section. *Reg. v. Cramp*, 44

**ADULTERATION.** See Sale of Food and Drugs Act.

**AFFILIATION.** See Bastardy Amendment Act.

**APPEAL.** See Lunatic. Practice.

**ARREST.** See Warrant of Commitment.

**ASSAULT**—*consent: child of tender years*—The prisoner was indicted at Quarter Sessions for an indecent assault on a girl seven years of age. The chairman refused to allow the prisoner's counsel to address the jury on the question of the girl's consent to the prisoner's act, ruling that a child of seven years old might submit,

but was incapable of giving consent in such a case:—*Held*, that such ruling was wrong. *Reg. v. Read* (2 Car. & K. 957; 3 Cox C.C. 256) followed. *Reg. v. Roadley*, 88

**BASTARDY**—*appeal: absence of appellant: order quashed not upon merits: second order: jurisdiction of justices*—Upon an appeal coming on for hearing to the sessions against an order adjudicating the appellant to be the putative father of a bastard child, it appeared that the respondent, the mother of the child, and the witnesses on her behalf, were not in attendance, owing to some mistake. The Court refused to adjourn the appeal, and quashed the order:—*Held*, that as the order had been quashed in the absence of all evidence, there had been no decision by the sessions on the merits so as to be final, and that a fresh order could be applied for to the justices at petty sessions by the respondent against the appellant. *The Queen v. Glynn* (41 Law J. Rep. M.C. 58) distinguished. *Reg. v. The Justices of Essex*, 67

**BASTARDY AMENDMENT ACT**—*order of affiliation: mistake in drawing up order: omission of words "maintenance and education": amendment*—By the Bastardy Amendment Act, 1872, s. 4, the justices who adjudge a man to be the father of a bastard child may make an order upon him for the payment to the mother of a sum of money weekly for the "maintenance and education" of the child:—*Held*, that an order purporting to be under section 4 for the payment of a weekly sum to the mother absolutely, and which contained no direction for the application of any part thereof for the "maintenance and education" of the child, was bad, and could not be amended by the Court under 12 & 13 Vict. c. 45. s. 7. *Reg. v. Padbury*, 55

**BICYCLE.** See Turnpike Toll.

**BY-LAWS.** See Common.

CHILD. See Assault.

CIVIL ENGINEERS. See Poor Rate.

COAL MINES REGULATION ACT—*insufficient ventilation in mine: expense of alteration: information: liability of manager*—By the Coal Mines Regulation Act, 1872 (35 & 36 Vict. c. 76), s. 51, it is provided that, in the event of any contravention of the general rules set out in that section, the owner, agent, and manager shall be each guilty of an offence, unless he proves that he has taken all reasonable means to prevent such contravention. The first of all such general rules provide that an adequate amount of ventilation shall be constantly produced in every mine to render harmless noxious gases, so that the working places of the shaft of such mine, and the travelling roads to and from such working places, shall be in a fit state for working and passing therein. The respondent, who was a certified manager of a colliery mine, at a salary of 1*l.* per week, was charged with an offence under section 51, rule 1. It was proved that the mine was improperly ventilated, and that the respondent might have improved the ventilation with the resources at his disposal, but that the requisite provision for the proper ventilation of the mine would have involved an outlay of 200*l.*:—*Held*, that the finding of the justices, that the respondent had omitted to employ the resources at his disposal for the improvement of the ventilation of the mine, disclosed an offence under section 51, for which he was liable to be convicted. *Hall v. Hopwood*, 17

COMMON—*metropolitan commons supplemental act, 1877: validity of by-laws: right of public meeting: common dedicated to use and recreation of public*—A common was by Act of Parliament dedicated to the use and recreation of the public, and directed to be regulated and managed by the Metropolitan Board of Works, who were empowered to frame by-laws and regulations for, among other things, the preservation of order on the common. A by-law made under this power prohibited the delivery of any public speech, lecture, sermon or address of any kind, except with the written permission of the Board first obtained, and upon such portions of the common and at such times as might by such written permission be directed and sanctioned by the board:—*Held*, that the by-law was valid, not being *ultra vires* as repugnant to the laws of England or the intention of the particular Act, and that it was a reasonable mode of regulating the user of the common to require previous information of the object and character of any meeting proposed to be held thereon. *De Morgan v. The Metropolitan Board of Works*, 51

COMPLAINANT, DEATH OF. See Lapse of Proceedings.

CONDEMNATION EX PARTE. See Public Health Act.

CONSENT. See Assault.

CONSTABLE. See Warrant of Commitment.

COUNTY OF A TOWN. See Poor.

CRIMINAL MATTER. See Practice.

CROSS-EXAMINATION. See Libel.

DEBTORS ACT—*adjudication of bankruptcy: infant: trade debts: infants relief act*—The prisoner was convicted under section 12 of the Debtors Act, 1869 (32 & 33 Vict. c. 62), for that he, within four months before the presentation of a bankruptcy petition against him, upon which he was adjudged bankrupt, quitted England, taking with him property to the amount of 20*l.* which ought by law to have been divided amongst his creditors. The prisoner, who traded in Hull, left England with a sum of money exceeding 20*l.*, and was during his absence adjudged bankrupt. At the time he was so adjudged, he was, as also at the present time, a minor. The debts proved against his estate in the bankruptcy were trade debts, and it did not appear that any debts for necessities supplied to him existed:—*Held*, that the conviction could not be upheld, because the prisoner had no creditors amongst whom the said sum of money ought by law to have been divided, the trade contracts being, by the Infants Relief Act, 1874 (37 & 38 Vict. c. 62. s. 1), void. *Reg. v. Wilson*, 13

DISTRESS WARRANT. See Summary Jurisdiction.

EVIDENCE. See Libel.

FORGERY—*fictitious christian name*—The prisoner in payment for a pony and cart purchased by him from the prosecutor, drew a cheque, in the presence of the prosecutor, upon a bank in which he, the prisoner, had no account, in the name of William Martin, his real name being Robert Martin, and gave it to the prosecutor as his, the prisoner's, own cheque drawn in his own name. The prosecutor received it in the belief that it was drawn in the prisoner's own name:—*Held*, that as the prisoner gave the cheque entirely as his own, his subscribing it by a fictitious name did not make it a forgery, the credit having been wholly given to himself, without any regard to the name, or any relation to a third person. *Dunn's Case* (1 L. C. C. 59) followed. *Reg. v. Martin*, 11

GUARDIANS. See Poor.

**HIGHWAY**—*name of owner of cart, when to be painted on it: highway act: "cart": customs and inland revenue duties act, 1869*—A light spring cart used by the maker of agricultural implements for conveying them to market as well as for driving himself and family from place to place, and on which he paid a tax under 32 & 33 Vict. c. 14. s. 18, is not a "cart" within the meaning of section 76 of the General Highway Act, 1835 (5 & 6 Will. 4. c. 50), so as to make it necessary for the owner's name to be painted thereon. *Danby v. Hunter*, 15

— See Public Health.

**INFANT.** See Debtors Act.

**INSTITUTION.** See Poor-rate.

**JURISDICTION.** See Libel.

—, **OUSTER OF—JUSTICES: summary jurisdiction: mens rea: assault and battery: 24 & 25 Vict. c. 100. ss. 42 and 46**—The question as to property which will oust the jurisdiction of justices to determine a charge of assault under 24 & 25 Vict. c. 100. s. 42, must be a question as to real property. Where two persons who were gamekeepers in the employ of a landlord of a farm to whom the right to game and rabbits was reserved, were charged before the justices by the tenant of such farm, under 24 & 25 Vict. c. 100. s. 42, with assaulting and beating him, and the acts complained of were done in a scuffle to take from the tenant whilst on his farm his bag, in which were rabbits claimed as the landlord's property:—*Held*, that the fact that the justices were of opinion that the gamekeepers acted under a *bona fide* belief that they had a right to do the acts complained of did not oust the jurisdiction of the justices, no question having arisen as to title to any interest in land within the meaning of section 46 of 24 & 25 Vict. c. 100. *White v. Fox*, 60

**JUSTICES.** See Libel. Poor.

**LAPSE OF PROCEEDINGS—obscene books: order for destruction: death of complainant before order**—In an appeal to sessions against an order made by a magistrate under Lord Campbell's Act (20 & 21 Vict. c. 83), for the destruction of certain books found on the appellant's premises, it was proved that the complainant had died after the summons was issued, but before the order appealed against was made. Thereupon it was contended by the appellant that the proceedings lapsed, as there was then no person in the position of a prosecutor:—*Held*, that inasmuch as the proceedings were *quasi* criminal in their nature, the death of the com-

plainant created no lapse, and that it was the duty of the magistrate, having once issued his summons on the information, to proceed. *Reg. v. Truelove*, 57

**LIBEL—defamatory: jurisdiction of magistrate on criminal charge of libel: evidence of truth of libel, when admissible: Lord Campbell's Act**—On the hearing before a magistrate of an information under section 5 of Lord Campbell's Act (6 & 7 Vict. c. 96) for maliciously publishing a defamatory libel, the magistrate has no jurisdiction to receive evidence, whether on cross-examination of the plaintiff's witnesses or on the direct testimony of witnesses called by the accused, to prove the truth of the libellous matter charged, on the ground that the truth is not in issue before him, and cannot at that stage constitute any defence. *Reg. v. Carden*, 1

**LUNATIC—pauper in workhouse: where resident: order for removal to asylum made by officiating clergyman: practice: appeal from order of sessions: appeal from divisional court without leave: judicature act**—It is provided by 16 & 17 Vict. c. 97. s. 67, that in certain cases a pauper deemed to be a lunatic may be examined by the officiating clergyman of the parish in which he is resident, and that an order may be made by that clergyman and another person, directing him to be received into an asylum. It is enacted by 7 & 8 Vict. c. 101. s. 56, that for the purpose of relief, settlement and removal of poor persons, the workhouse of a union shall be considered as situated in the parish to which such poor person is chargeable:—*Held* (affirming the decision of the Queen's Bench Division), that an order for the removal of a pauper lunatic under 16 & 17 Vict. c. 97, is not an order within section 56 of 7 & 8 Vict. c. 101, and that such an order made by the officiating clergyman of C., for the removal of a pauper then in the workhouse of C. was duly made, although the pauper did not, before entering the workhouse, reside in the parish of C. *Reg. v. Pemberton. Reg. v. Smith* (App.), 29

An appeal from an order of the Queen's Bench Division, discharging a rule for a *certiorari* to bring up an order of justices in petty sessions, is not an appeal from an inferior Court within section 46 of the Judicature Act, 1873, and no leave to appeal is required. *Ibid.*

— **reception of lunatics in an unlicensed house: honest belief**—8 & 9 Vict. c. 100. s. 44, makes it an offence for any person to receive two or more lunatics into any house, unless such house shall be an asylum or hospital registered under the Act, or a house duly licensed under the Act:—*Held*, that to constitute such an offence, knowledge or absence of knowledge of the person receiving lunatics as to their lunacy is immaterial. The defendant was convicted under such Act, but it was specially

found by the jury that though the persons so received were lunatic, the defendant honestly, and on reasonable grounds, believed that they were not lunatic. *Held*, that such belief was immaterial, and that the conviction was right. *Reg. v. Bishop*, 45

— See Poor Law.

MENS REA. See Jurisdiction, Ouster of.

**METROPOLIS MANAGEMENT—rate: inequality of benefit: exemption of, or levy of rate at a lower scale on, part of a parish: description of such parts in precept**—By the Metropolitan Management Act, 1855, s. 158, district boards may require the overseers of parishes within their district to levy the sums which such boards may require for the execution of the Act. By section 159, district boards can exempt or rate on a lower scale parts of parishes not benefited or benefited to a less degree than other parts by such expenditure. The overseers of L. were required, by a precept of the district board, to levy a sum for the expenditure incurred in the execution of the above Act. The precept directed that, as regards such parts of "the parish as consist of lands used as arable, meadow or pasture lands only, or as woodland, orchard, market, hop, herb, flowers, fruit or nursery market garden," the rate should be levied on a lower scale. There was a considerable quantity of such land in the parish, the whole of which was assessed at the lower scale, though it did not lie altogether, but was scattered about:—*Held* (affirming the decision of the Queen's Bench Division), that the rate was good, and that the precept sufficiently described the nature of the property to be rated at the lower rate. *Reg. v. The London, Brighton and South Coast Rail. Co. (App.)*, 32

METROPOLITAN COMMONS. See Common.

**MINES—metalliferous mines regulation: fencing shaft of abandoned mine: owner: person interested in minerals**—The appellant was lessee of a lead mine and of all the duties arising therefrom, under a lease from the Duchy of Lancaster, by which he had to pay to the duchy, by way of rent, all he might annually receive in respect of the mine, with an additional yearly rent of five shillings. The mine was demised to him subject to a custom by which all the subjects of the realm have a right to search there for veins of lead ore, upon paying certain duties, and the appellant had no pecuniary interest in the mine or in the minerals thereof. Section 13 of the Metalliferous Mines Regulation Act, 1872 (35 & 36 Vict. c. 77), requires the owner of an abandoned mine to which the Act applies and every other person interested in the minerals of the mine, to cause the

top of the shaft to be fenced, and section 41 states that the term "owner" means any person "who is the immediate proprietor, or lessee, or occupier of a mine," and "does not include a person who merely receives a royalty rent or fine from a mine, or is merely the proprietor of a mine subject to any lease, grant or licence for the working thereof, or is merely the owner of the soil and not interested in the minerals of the mine":—*Held*, that the appellant was neither owner of the mine nor a person interested in its minerals within the meaning of section 13, and, therefore, upon the mine being abandoned he was not liable to cause the top of its shaft to be fenced as required by that section. *Arkwright v. Evans*, 82

*Quere*, whether the statute applies to a mine which belongs to the Duchy of Lancaster. *Ibid*.

MISDEMEANOUR. See Debtors Act.

NUISANCE. See Public Health Act.

OBSCENE BOOKS. See Lapse of Proceedings.

**POOR—guardians ex officio: county justices: county of a town**—By 4 & 5 Will. 4. c. 76. s. 38, every justice of the peace residing in any parish and acting for the county, riding or division in which a union is situated, is made an *ex officio* guardian, and is entitled to act as such:—*Held*, that the term "county" in the above section included the county of a town. *Reg. v. Pearce*, 81

**POOR LAW—settlement of pauper lunatic: husband and wife: desertion by husband: order of removal: wife's settlement**—By 24 & 25 Vict. c. 56. s. 3, a married woman who has been deserted by her husband, and who, after such desertion, has resided for three years (altered by 29 & 30 Vict. c. 11. s. 1, to one year) in such a manner as would, if she were a widow, render her exempt from removal, shall not be liable to be removed from the parish wherein she shall be resident unless her husband returns to cohabit with her. A pauper lunatic was married to G. B. in 1840, and resided with her husband for some ten years afterwards. She committed adultery, and was eventually told by her husband to leave his house on that account. She left accordingly, and never returned to cohabit with him. From 1865 up to the time of her removal to the lunatic asylum in 1877 she resided at Chat-ham, and such residence was in such manner and under such circumstances as would have rendered her irremovable had she been a single woman. The husband's settlement was in the M. Union:—*Held*, that there had been a "desertion" of the pauper by her husband within the meaning of 24 & 25 Vict. c. 56. s. 3, and that consequently the pauper did not follow

his settlement, but was irremovable from Chatham. Whether the pauper acquired a settlement by residence at Chatham under the Divided Parishes, &c., Act (39 & 40 Vict. c. 61), s. 34, *quere*. *Reg. v. The Guardians of the Maidstone Union*, 25

**POOR RATE**—*occupier going out before the rate discharged: unoccupied premises*—The 16th section of 32 & 38 Vict. c. 41 relieving the occupier who was in occupation at the time of making the rate, but who has gone out before it was wholly paid, from the rate except in proportion to the time he has occupied, applies only to the case where there is an incoming occupier, and not where the premises are left unoccupied. *The Overseers of St. Werburgh, Derby, v. Hutchinson*, 23

— *exemption from: civil engineers: institution: primary object of society: purposes of science, literature and fine arts*—A society known as “the Institution of Civil Engineers,” was formed for the purpose of promoting the general advancement of mechanical science, and more particularly the acquisition of that species of knowledge which constitutes the profession of a civil engineer, being the art of directing the great sources of power in nature for the use and convenience of man, as the means of production and of traffic in states both for external and internal trade, as applied in the construction of roads, bridges, &c., and in the art of navigation by artificial power for the purpose of commerce, and in the construction and adaptation of machinery, and in the drainage of cities and towns. The by-laws and regulations of the society stated, under the head of “Objects,” that the institution was established for the general advancement of mechanical science, and more particularly for promoting the acquisition of that species of knowledge which constitutes the profession of a civil engineer. The institution consisted of three classes, namely, members, associates, and honorary members, with a class of students attached, and papers were read at the institution on various subjects:—*Held*, that the primary purpose of the institution was the edification and instruction of its members and students in sundry arts, with the view of enabling them the better to practise a particular profession, and consequently that such institution was not entitled to be exempted from rates under 6 & 7 Vict. c. 36, as a society established exclusively for the purposes of science, literature or the fine arts. *Reg. v. The Institution of Civil Engineers*, 34

— *liability to be rated: market: occupier of stall*—The appellant rented two stalls in Bodmin market year by year at a rent payable weekly. The stalls in question had been put up to auction and were bought by the appellant and used by him on market-days. The stalls thus rented were capable of being re-

moved, and there was no agreement that they should always stand on the same identical spot, though the appellant had a right to retain the same relative position in the row:—*Held*, that there was no such occupation of the stall as rendered the appellant liable to be rated under 43 Eliz. c. 2, he having acquired only the right to a given stall in a given row, and not the right to place one on any definite portion of ground. *Spear v. The Guardians of the Bodmin Union*, 69

— See Summary Jurisdiction.

**PRACTICE**—*appeal: “criminal cause or matter” judicature act: elementary education act: school board: offence against by-laws*—Section 74 of the Elementary Education Act, 1870, enables a school board to make by-laws for certain purposes, and, amongst them for the purpose of imposing penalties, recoverable in a summary manner, for breach of any by-law. Section 92 provides that any penalty recoverable summarily under the Act may be recovered before justices in manner directed by the 11 & 12 Vict. c. 43 (*Jervis’ Act*), and the Acts amending the same. Upon an information against the respondent to recover a penalty for breach of one of the by-laws of a school board justices stated a case for the opinion of the Queen’s Bench Division, who gave judgment for the respondent:—*Held*, on appeal, that this judgment was in a “criminal cause or matter” within section 47 of the Judicature Act, 1873, and therefore that the appeal would not lie. *Mellor v. Denham* (App.), 89

— See Lunatic.

**PUBLIC HEALTH**—*sale of meat unfit for human food: seizure by inspector: condemnation by justice: right of owner to be heard*—By the Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 116, an inspector of nuisances may, at all reasonable times, inspect any meat exposed for sale, or deposited in any place for the purpose of sale, or of preparation for sale, and intended for the food of man (the proof that the same was not exposed or deposited for any such purpose, or was not intended for the food of man, resting with the party charged), and if it appears to the inspector that the meat is unfit for the food of man, he may seize and carry the same before a justice. By section 117, if it appears to the justice that the meat seized is unfit for human food, he shall condemn the same and order it to be destroyed or disposed of; and the person on whose premises the same was found is made liable to a penalty on conviction, either by the justice who condemned the meat, or by any other justice having jurisdiction. The appellant was convicted before two justices of having deposited meat for the purpose of sale or for

the purpose of preparation for sale, found by an inspector of nuisances to be unfit for the food of man. The meat in question had been seized and carried away by an inspector, and had been ordered to be destroyed by a justice *ex parte* without any formal notice being given to the appellant. It was objected by the appellant that the meat could not be condemned and ordered to be destroyed by a justice *ex parte* and without notice to him to attend and shew cause against the same. It was also objected that the conviction was bad for duplicity:—*Held*, that the condemnation of the meat and an order for destruction was an *ex parte* proceeding altogether apart from the punishment of the offender. *Held* also, that the purpose for which the meat was deposited was properly charged in the alternative, and that consequently there was no duplicity. *Reg. v. White*, 19

— *paving private street: highway repairable by the inhabitants at large: decision of justices as to character of street conclusive: res judicata: public health act: dismissal of complaint, evidence of*—A decision of justices, unappealed against, on a summons under the Public Health Act against an owner of premises abutting on a street, for payment of the expenses incurred by the board in paving, &c., such street is final and conclusive as to the street being or not being a highway repairable by the inhabitants at large. Where such a summons had been dismissed by justices in 1874, and no certificate of dismissal had been required or given under section 14 of 11 & 12 Vict. c. 43,—*Held*, that upon a fresh summons in 1879, the former adjudication was sufficiently proved by the entry in the justices' notebook, and when so proved was binding and conclusive. *Reg. v. Hutchins*, 64

— *highway: construction of local act: projection "over or upon" pavement: oriel window not interfering with traffic*—An Act "for the protection of the health of the inhabitants of Liverpool, and the better regulation of buildings in the borough," enacted (among other provisions dealing entirely with footways) that "no projection of any kind should be made in front of any building over or upon the pavement," with certain exceptions in favour of shop fronts and doorways:—*Held*, that an oriel window, which projected over the pavement of a street, but did not interfere with the use of the footpath, but only with the access of light and air to the street, was not within the above provisions. *Goldstraw v. Duckworth*, 73

— *offensive trade: "a nuisance or injurious to health": injury to health of sick persons: nuisance not to health*—Under the Public Health Act, 1875, s. 114, relating to complaints by an urban sanitary authority of trades causing effluvia which are "a nuisance or injurious to the health

of any of the inhabitants of the district" of such authority, complaint was made of a trade causing effluvia which were shewn to be a nuisance, but were not proved to affect health, except the health of persons already ill:—*Held*, that injury to the health of persons already ill was injury to health within the enactment; and by STEPHEN, J., that any nuisance by effluvia from an offensive trade, although not a nuisance to health, was a nuisance within the enactment. *The Malton Local Board of Health v. The Malton Farmers' Manure and Trading Co. (Lim.)*, 90

RATE. See Metropolis Management.

RATING—*sporting rights: severed from the occupation of the land*—Where the owner of land occupies it himself and demises the right of sporting to another, the right of sporting is severed from the occupation of the land within the meaning of 37 & 38 Vict. c. 54, s. 6, sub-s. 2, so as to make the lessee of the right of sporting rateable. *The Queen v. Battle, Sussex* (36 Law J. Rep. M.C. 1; Law Rep. 2 Q.B. 8) distinguished. *Kenrick v. The Churchwardens and Overseers of the Parish of Guildfield*, 27

RES JUDICATA. See Public Health.

REVENUE. See Highway.

SALE OF FOOD AND DRUGS ACT—*adulterated article: purchaser: inspector acting by deputy: information*—The respondent was summoned upon an information laid by the appellant, the inspector appointed under the Sale of Food and Drugs Act, 1875 (38 & 39 Vict. c. 63), for having sold to the prejudice of one Toy certain coffee which was not of the nature and quality of the article demanded by such purchaser, contrary to the provisions of section 6. It appeared that Toy went as the appellant's assistant, and asked for some best coffee, for which he paid. On being analysed, the coffee purchased was found to contain a large proportion of chicory. The justices dismissed the information on the ground, amongst others, that the proceeding having been instituted by the appellant in his official capacity, he and not Toy should have personally purchased the article and dealt with the same:—*Held*, upon the above facts, that Toy might be treated as an ordinary purchaser, and that the justices had acted wrongly in entertaining the objection. *Horder v. Scott*, 78

SESSIONS. See Lunatic.

SETTLEMENT. See Poor Law.

SPORTING RIGHTS. See Rating.

**SUMMARY JURISDICTION**—*court of summary jurisdiction: proceedings for the recovery of poor-rates: distress warrant*—A justice of the peace sitting to issue a warrant of distress for the recovery of poor-rates is not a Court of summary jurisdiction within the meaning of the Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49), and the provisions contained in that statute in no way affect or apply to proceedings for the recovery of poor-rates. *Reg. v. Price*, 49

**TAXES.** See Highways.

**TURNPIKE TOLL**—*carriage drawn by steam or other power: bicycle*—A private Act (3 Will. 4. c. lv.) imposed a toll of 6s. on every carriage of whatever description, drawn, impelled or set in motion by steam or by any other power or agency than being drawn by horses or beasts of draught:—*Held*, that a bicycle was not a "carriage" within the meaning of the Act, which was clearly intended to apply only to carriages impelled by mechanical power. *Taylor v. Goodwin* (48 Law J. Rep. M.C. 104) distinguished. *Williams v. Ellis*, 47

**VOLUNTEER ACT**—*administrative battalion: dismissal of member: commanding officer: regulations*—By the Volunteer Act, 1863, s. 21, sub-s. 1, the commanding officer of a Volunteer corps may discharge from the corps any volunteer for breach of discipline. By sub-section 2, a volunteer belonging to a corps or administrative regiment who is guilty of misconduct while under arms or on march or duty is liable to arrest at the order of the officer then in command of the corps or regiment. The appellant was a member of the W. Corps, which consisted of two companies, of which the defendant was captain, commandant and commanding officer. Whilst the two companies were assembled in camp, they formed, together with certain other companies, an administrative battalion, the whole of the companies in camp being under

the command of M., the commanding officer of the first administrative battalion. On parade of the appellant's corps, forming part of the administrative battalion in camp, the appellant was dismissed from the corps for breach of discipline by the respondent, who was present superintending the company drill of the corps:—*Held*, that the respondent was the commanding officer on the occasion when he dismissed the appellant within the meaning of section 21 of the Volunteer Act, 1863, and that the power of the commanding officer of the administrative regiment was limited to arrest for the period during which the regiment was collectively under his control. *Tombs v. Magrath*, 76

**WARRANT OF COMMITMENT**—*backing of warrant: arrest by constable*—C. was convicted of an assault on two police constables in the execution of their duty. The constables were members of the county police force of Worcestershire, and were apprehending C. in the city of Worcester under a warrant issued by two justices of the county of Worcestershire, for his commitment to prison for default in payment of a fine. Worcester is a borough having a separate commission of the peace with exclusive jurisdiction, and a separate police force. The warrant was not backed by any justice of the city of Worcester, and C. was not pursued from the county, but found in the city:—*Held*, that the conviction was wrong, because the constables were not acting in the execution of their duty in so executing such warrant. *Reg. v. Oumpston*, 41

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THE  
**LAW JOURNAL REPORTS :**

FOR  
THE YEAR 1880 :

CASES  
IN THE  
**Probate, Divorce and Admiralty Division**  
OF  
THE HIGH COURT OF JUSTICE,

REPORTED BY  
GEORGE CALLAGHAN, Esq., AND EDWARD STANLEY ROSCOE, Esq.,  
BARRISTERS-AT-LAW ;

AND ON APPEAL THEREFROM

TO

**The Court of Appeal and House of Lords,**

REPORTED BY  
ARTHUR CLEMENT EDDIS, Esq., H. LACY FRASER, Esq.,  
WILLIAM ROBERT COLLYER, Esq., ROBERT BRUCE RUSSELL, Esq.,  
AND  
(*in the House of Lords*) LIONEL LANCELOT SHADWELL, Esq.,  
BARRISTERS-AT-LAW.

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MICHAELMAS, 1879, TO MICHAELMAS, 1880.

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CASES ARGUED AND DETERMINED  
IN THE  
**Probate, Divorce and Admiralty Division**  
OF  
THE HIGH COURT OF JUSTICE,  
AND ON APPEAL THEREFROM TO THE  
COURT OF APPEAL AND HOUSE OF LORDS.

MICHAELMAS 1879 TO MICHAELMAS 1880.

43 *Victoria*.

DIVORCE. } SOTTOMAYOR (OTHERWISE DE  
1879. } BARROS) v. DE BARROS (THE  
Aug. 6. } QUEEN'S PROCTOR INTERVENING).

*Nullity of Marriage—Marriage in England between two Portuguese (first cousins), one domiciled in Portugal, the other in England—Lex Domicilii—Lex loci contractus.*

Two natives of Portugal, one of whom was domiciled in England, the other in Portugal, contracted a marriage in England in 1866. They were first cousins, and were incapable, according to the law of Portugal, of intermarrying, on account of consanguinity, without a Papal dispensation. The petitioner (the wife) filed a petition praying that her marriage with the respondent might be declared null and void:—

Held, that the *lex loci contractus* should prevail in the matter; and the marriage being valid according to the law of England, the Court dismissed the petition.

The Queen's Proctor, although intervening before decree nisi, is not precluded from setting up other defences in addition to that of collusion.

In this suit the petitioner prayed that her marriage with the respondent might be declared null and void, on the ground that she and the respondent were natives of Portugal, and at the time of the mar-

riage were domiciled in Portugal; that they were natural and lawful first cousins, and that according to the law of Portugal first cousins are incapable of contracting marriage on account of consanguinity. The respondent entered an appearance, but did not file any answer.

The case came on for hearing before Sir R. Phillimore, who directed that the papers should be sent to the Queen's Proctor, in order that he might, under the direction of the Attorney-General, instruct counsel to argue the question of law raised in the case. The Queen's Proctor obtained leave to intervene, and filed pleas; and after argument Sir R. Phillimore held that the marriage, having been contracted in England and being valid by English law, could not be declared null on the ground that the parties were incapacitated from entering into it by the law of Portugal (1). On appeal, this judgment was reversed (2). The case was accordingly remitted to this Division, in order that the questions of fact raised by the Queen's Proctor's pleas should be determined.

The case came on for hearing in Trinity Sittings, 1879.

(1) 46 Law J. Rep. P. & M. 43; 2 Law Rep. P. & D. 81.

(2) 47 Law J. Rep. P. & D. 23; 3 Law Rep. P. & D. 1.

*Sottomayor v. De Barros, Div.*

*Inderwick* (with him *Bayford*), for the petitioner.

*The Attorney-General* (*Sir J. Holker*) (with him *Willis* and *Jacques*), for the Queen's Proctor.

*Cur. adv. vult.*

On the 6th of August, the following judgment, in which the facts of the case are fully stated, and the arguments, which were similar to those used when the matter was before Sir R. Phillimore and the Lords Justices, reviewed, was delivered by

THE PRESIDENT (SIR JAMES HANNEN).—In this suit the petitioner prayed that her marriage with the respondent might be declared null and void, on the ground that she and the respondent were natives of Portugal, and at the time of the marriage domiciled in Portugal; that they were natural and lawful first cousins; and that according to the law of Portugal first cousins are incapable of contracting marriage, on account of consanguinity. The respondent entered an appearance, but did not file any answer. The case came on for hearing before Sir R. Phillimore, who directed that the papers should be sent to the Queen's Proctor, in order that he might, under the direction of the Attorney-General, instruct counsel to argue the question whether the petitioner had shewn a sufficient ground for a decree of nullity—first, by reason of the incapacity of the parties to contract marriage in 1866; secondly, by reason of fraud; and thirdly, by reason of the petitioner's want of intention to contract a marriage and of her ignorance of the effect of the ceremony. On the 7th of November, 1876, the Queen's Proctor obtained leave to intervene in the case, and filed pleas. On the 30th of January, 1877, it was ordered, by consent of the parties, that the questions of law referred to the Queen's Proctor for argument be heard before the questions of fact without prejudice to either party. The case accordingly came on for argument before Sir R. Phillimore, on the 17th of March, 1877, when the learned Judge stated that he was satisfied that the petitioner perfectly understood she was about to contract a marriage, and

that it could not vitiate the marriage that she had an erroneous view of its future consequences, and refused to set it aside on the ground of incapacity, of age, or collusion, or fraud; and further held that the marriage, having been contracted in England and being valid by English law, could not be declared null on the ground that the parties were incapacitated from entering into it by the law of Portugal (1). On appeal this judgment was reversed (2). The case was accordingly remitted to this Division in order that the questions of fact raised by the Queen's Proctor's pleas should be determined. These pleas alleged—first, collusion; secondly, that the petitioner and respondent were lawfully married; thirdly, that the said marriage was not procured by fraud; fourthly, that the petitioner intended to, and did, contract a lawful marriage, and was not ignorant of the effect thereof; fifthly, that the petitioner and respondent cohabited as man and wife; sixthly, that the petitioner and respondent, at the time of the marriage, were domiciled in England. It was objected, on behalf of the petitioner, that the Queen's Proctor was not entitled to intervene on any ground but that of collusion. This depends on the construction to be put upon the 7th section of 23 & 24 Vict. c. 144. By that section it is enacted that during the period between the decree *nisi* and the decree absolute, "any person shall be at liberty . . . to shew cause why the decree *nisi* should not be made absolute by reason of the same having been obtained by collusion or by reason of material facts not brought before the Court." This part of the section does not apply, because no decree *nisi* has been pronounced; but the section proceeds, "and at any time during the progress of the cause or before the decree *nisi* is made absolute, any person may give information to the Queen's Proctor of any matter material to the due decision of the cause, who may thereupon take such steps as the Attorney-General may deem necessary; and if from any such information or otherwise the Queen's Proctor shall suspect that any parties to the suit are or have been acting in collusion for the purpose of obtaining a decree contrary to the justice

*Sottomayor v. De Barros, Div.*

of the case, he may, under the direction of the Attorney-General, and by leave of the Court, intervene in the suit, alleging such a case of collusion, and retain and subpoena witnesses to prove it." In this case information was given to the Queen's Proctor of matter material to the due decision of the case, amongst other things, that facts, tending to shew that the parties at the time of the marriage were not domiciled in Portugal, but in England, which were not brought before the Court, could be proved, and he therefore took the directions of the Attorney-General on the subject, and, suspecting that the parties were acting in collusion, he, under the direction of the Attorney-General and by leave of the Court, intervened in the suit. Having so done, the question is whether he may plead anything besides collusion. This question was decided in the affirmative by Lord Penzance in the case of *Dering v. Dering* (3). There the intervention was after decree *nisi*; but in the case of *Drummond v. Drummond* (4) the same question had arisen before the decree *nisi*, and Sir C. Cresswell held, that the Queen's Proctor was entitled to plead other pleas besides collusion, and the same course was allowed in *Boardman v. Boardman* (5). I therefore hold that the Queen's Proctor is entitled to set up other defences in addition to that of collusion, and I proceed to give my findings on the several issues raised by the Queen's Proctor's pleadings.

The first of these is whether the petitioner and the respondent are guilty of collusion. I am of opinion that that charge is not established. The second is whether the parties were lawfully married. It was not disputed that a ceremony of marriage was gone through which was valid according to the law of England; whether it was valid according to the law of Portugal, and the effect of its invalidity by that law, will be considered hereafter. The third issue is whether the marriage was procured by fraud. I am of opinion that the evidence

which was given before Sir R. Phillimore, as well as that which has been adduced before me, clearly establishes that the marriage was not procured by fraud. Fourthly, whether the petitioner intended to contract a lawful marriage, or was ignorant of the effect thereof. The evidence leaves no doubt on my mind that the petitioner intended to contract a lawful marriage and was not ignorant of any fact the knowledge of which could be material to the constitution of a valid marriage. On this point I may refer to the evidence of Mr. Miller, a solicitor, who was consulted by the father of the respondent with regard to the marriage before its celebration, and who says that, being struck with the youth of the parties, he saw them on the subject, both separately and together, and that he ascertained that they both wished it. That they were ignorant of the effect of the Portuguese law on the ceremony is most probable; but this ignorance cannot affect the validity of the marriage. The fifth issue is, whether or not the petitioner and the respondent cohabited as husband and wife. I do not give any opinion on this question, as I consider it unimportant for the purposes of this cause—*Simonin v. Mallac* (6). The sixth issue is the important one, on which the arguments have chiefly turned—namely, whether or not the petitioner and the respondent were, or either of them was, at the time of the marriage domiciled in England. With regard to the petitioner, as she was a minor at the time of the marriage, her domicile was that of her father. His domicile was Portuguese down to the time of his coming to England in 1858, and I am not satisfied that he had at that time, or at any time afterwards, mental capacity to change his domicile. I therefore find that the domicile of the petitioner at the time of the marriage was Portuguese. With regard to the respondent, he was also a minor, and his domicile was, therefore, the same as his father's, whom I shall call Gonzalo de Barros, though he was sometimes called Caldos. This person formerly carried on the business of wine grower and exporter in Portugal

(3) 1 Law Rep. P. &amp; D. 591.

(4) 2 Sw. &amp; T. 269.

(5) 1 Law Rep. 1 P. &amp; D. 233.

(6) 2 Sw. &amp; Tr. 67.

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In 1858 he came to England, bringing with him the whole of his family. Here he set up in business as a wine merchant and importer. In 1860 he took a lease of a house in Dorset Square for twenty-one years. On the 31st of July, 1861, an agreement was entered into for the formation of a partnership for twenty years between the brother of Gonzalo de Barros and his sister and sister-in-law as wine importers and merchants under the style of Caldos Brothers, of which partnership Gonzalo was to be manager at a salary of 500*l.* per annum, with the option of becoming a partner. The business was to be and was carried on at 9, Catherine Court, St. Swithin's Lane. The firm of Caldos Brothers failed in 1865; but Gonzalo de Barros continued to reside in London, and his son, the respondent, being still a minor, set up in the wine business. It is said by one of the witnesses that Gonzalo de Barros lived privately in London at the time, by which it would seem to be meant that he followed no business, but it is probable that the business of the son was regarded as the business of both. In 1868, in the course of some legal proceedings which were instituted in Portugal, Gonzalo de Barros informed his solicitor that his domicile was English, and instructed him to collect evidence in support of this assertion, which was done. In 1870 Gonzalo de Barros died in London, never having quitted London since his coming here in 1858. Evidence was given that he frequently said during this period that he meant to remain in England; and, on the other hand, the only evidence besides that of the petitioner and her mother offered to rebut the inference to be drawn from the facts above stated was that of one witness that Gonzalo frequently said that he should return to Portugal "as soon as his affairs were settled." It is evident, however, that this is not the language of a man who has become the manager of a business at a salary of 500*l.* a year, and even assuming the correctness of the witness's memory, such declarations cannot outweigh the evidence of the facts above stated—*Doucet v. Geoghegan* (7).

(7) Law Rep. 9 Ch. D. 441.

From these facts I draw the inference that the father of the respondent at the time he became the manager of the wine business adopted England as his place of permanent residence, with the intention of remaining there for an unlimited time—in other words, that he became domiciled here. It follows, therefore, that the respondent's domicile was English also. There is abundant evidence that the respondent himself, after he came of age, continued to look upon England as the place of his domicile, and this may perhaps have some reflex effect in considering what place his father had chosen as his domicile; but as the time of the marriage is the important point in the case, I do not think it necessary to dwell on the evidence of the respondent's subsequent intentions. The question then arises, what is the law applicable to such a case? It is clear that the judgment which has been already given by the Court of Appeal is not applicable to such a state of facts. The language of the Court of Appeal is explicit:—

"It was pressed upon us in argument that a decision in favour of the petitioner would lead to many difficulties if questions should arise as to the validity of a marriage between an English subject and a foreigner in consequence of prohibitions imposed by the law of the domicile of the latter. Our opinion on this appeal is confined to the case where both the contracting parties are at the time of their marriage domiciled in a country the law of which prohibits their marriage."

This passage leaves me free to consider whether the marriage of a domiciled Englishman in England with a woman subject by the law of her domicile to a personal incapacity not recognised by English law must be declared invalid by the tribunals of this country? Before entering upon this enquiry, I would observe that the Lords Justices appear to have laid down as a principle of law a proposition which was much wider in its terms than was necessary for the determination of the case before them. It is thus expressed:—"It is a well recognised principle of law that the question of personal capacity to enter into any contract is to be decided by the law of domicile."

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And, again :—" As in other contracts, so in that of marriage, personal capacity must depend on the law of domicile." It is, of course, competent for the Court of Appeal to lay down a principle which, if it formed the basis of the judgment of that Court, must, unless it be disclaimed by the House of Lords, be binding on all future cases. But I trust I may be permitted, without disrespect, to say that the doctrine thus laid down has not hitherto been " well recognised." On the contrary, it appears to me to be a novel principle for which, up to the present time, there has been no English authority. What authority there is seems to be distinctly the other way. Thus in the case of *Meade v. Roberts* (8) the contract on which the defendant was sued was made in Scotland. The defence was that the defendant was an infant, but Lord Eldon held the defence bad, saying,— " If the law of Scotland is that such a contract as the present could not be enforced against an infant, it should have been given in evidence. The law of the country where the contract arose must govern the contract." Sir E. Simpson, in the case of *Scrimshire v. Scrimshire* (9), when dealing with the subject, says :—" This doctrine of trying contracts, especially those of marriage, according to the law of the country where they are made is conformable to what is laid down in our books, and what is practised in all civilised countries." And again—" These authorities fully shew that all contracts are to be considered according to the laws of the country where they are made, and the practice of civilised countries has been conformable to this doctrine, and by the common consent of nations has been so received." This is the view of the subject which is expressed by *Burge* (vol. 1, c. 4, 132), and by *Story* (*Conflict of Laws*, section 103); and Sir C. Cresswell, in *Simonin v. Mallac* (6), says :—" In general the personal competency of individuals to contract has been held to depend on the law of the place where the contract was made." If the English reports do not furnish more authority on

the point, it may, perhaps, be referred to its not having been questioned. I cannot but think, therefore, that the learned Lords Justices would not desire to base their judgment on so wide a proposition as that which they have laid down with reference to the personal capacity to enter into all contracts. In truth, very many and serious difficulties arise if marriage be regarded only in the light of a contract. It is, indeed, based upon the contract of the parties, but it is a *status* arising out of contract to which each country is entitled to attach its own conditions, both as to its creation and duration. In some countries no other condition is imposed than that the parties, being of a certain age, and not related within certain specified degrees, shall have contracted with each other to become man and wife; but that in those countries marriage is not regarded merely as a contract is clear, since the parties are not at liberty to rescind it. In some countries certain civil formalities are prescribed, in others a religious sanction is required. If the subject be regarded from this point of view, the effect of the recent decision of the Court of Appeal has only been to define a further condition imposed by English law—namely, that the parties do not both belong by domicile to a country the laws of which prohibit their marriage. But, as I have already pointed out, that judgment expressly leaves altogether untouched the case of a marriage of a British subject in England, where the marriage is lawful, with a person domiciled in a country where the marriage is prohibited. With regard to such a marriage, all the arguments which have hitherto been urged in support of the larger proposition, that a marriage good by the law of the country where solemnised must be deemed by the tribunals of that country to be valid irrespective of the law of the domicile of the parties, remain with undiminished effect. They cannot be stated with greater accuracy and force than by Sir C. Cresswell in *Simonin v. Mallac* (6); and, as I could not express myself so well, I shall adopt the language of that learned Judge as my own, without introducing the qualification which the decision of the

(8) 3 Esp. 183.

(9) 2 Consol. 412.

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Court of Appeal has created. But before quoting the language of that very eminent Judge, I must observe that the Court of Appeal has distinguished the present case from that of *Simonin v. Mallac* (6), on the ground that there the incapacity arose from the want of consent of parents, and that "the consent of parents required by the law of France must be considered a part of the ceremony of marriage." Certainly Sir C. Cresswell did not base his judgment on that ground. After observing that a distinction might be drawn between an absolute and conditional prohibition, he proceeds:—"But taking the decree of the French Court in the suit there instituted as evidence that by the law of France this marriage was void, we again come to the broad question—is it to be judged of here by the law of England or the law of France? In general the personal competency or incompetency of individuals to contract has been held to depend upon the law of the place where the contract is made. But it was and is contended that such a rule does not extend to contracts of marriage, and that parties are, with reference to them, bound by the law of their domicile." Then, after reviewing the authorities, he says:—"It is very remarkable that neither in the writings of jurists, nor in the arguments of counsel, nor in the judgments delivered in the Courts of justice, is any case quoted or suggestion offered to establish the proposition that the tribunals of a country where a marriage has been solemnised in conformity with the laws of that country should hold it void because the parties to the contract were the domiciled subjects of another country, where such a contract would not be allowed." And later on the following passage occurs, which is specially applicable to the present case:—"Every nation has a right to impose on its own subjects restrictions and prohibitions as to entering into marriage contracts, either within or without its own territories; and if its subjects sustain hardship in consequence of those restrictions, their own nation only must bear the blame; but what right has one independent nation to call upon any other nation equally independent to surrender

its own laws in order to give effect to such restrictions and prohibitions? If there be any such right it must be found in the law of nations, that law to which all 'nations have consented, or to which they must be presumed to consent, for the common benefit and advantage.' And which would be for the common benefit and advantage in such a case as the present? The observance of the law of the country where the marriage is celebrated, or the law of a foreign country? Parties contracting in any country are to be assumed to know, or to take the responsibility of not knowing, the law of that country. Now, the law of France (in this case read Portugal) is equally stringent, whether both parties are French or one only. Assume, then, that a French subject comes to England, and there marries without consent a subject of another foreign country, by the laws of which such a marriage would be valid, which law is to prevail? To which country is an English tribunal to pay the compliment of adopting its law? As far as the law of nations is concerned each must have an equal right to claim respect for its laws. Both cannot be observed. Would it not, then, be more just, and therefore more for the interest of all, that the law of that country should prevail which both are presumed to know and to agree to be bound by? Again, assume that one of the parties is English, would not an English subject have as strong a claim to the benefit of English law as a foreigner to the benefit of foreign law? . . . The great importance of having some one certain rule applicable to all cases; the difficulty, not to say impossibility, of having any rule applicable to all cases, save that the law of the country where a marriage is solemnised shall in that country at least decide whether it is valid or invalid; the absence of any judicial decision or *dictum*, or of even any opposite opinion of any writer of authority on the law of nations, have led us to the conclusion that we ought not to found our judgment in this case on any other rule than the law of England as prevailing amongst English subjects."

This was the opinion of Sir C. Cresswell, Channell, B., and Keating, J., con-

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stituting the full Court, whose decisions at that time were only subject to review by the House of Lords. The Court of Appeal has, indeed, without alluding to the arguments of these very eminent Judges, now overruled their opinion; but Lord Justice Cotton has expressed his concurrence in their views so far as is necessary for the purposes of the present case. He says: "No country is bound to recognise the laws of a foreign State when they work injustice to its own subjects, and this principle would prevent the judgment in the present case being relied on as an authority for setting aside a marriage between a foreigner and an English subject domiciled in England on the ground of any personal incapacity not recognised by the law of this country." Numerous examples may be suggested of the injustice which might be caused to our own subjects if a marriage was declared invalid on the ground that it was forbidden by the law of the domicile of one of the parties. It is still the law in some of the United States that a marriage between a white person and a "person of colour" is void. In some States the amount of colour which will incapacitate is undetermined. In North Carolina all are prohibited who are descended from negro ancestors to the fourth generation inclusive, though an ancestor of each generation may have been a "white person" (*Pearson on Marriage*, section 308). Suppose a woman domiciled in North Carolina, with such an amount of colour in her blood as would arise from her great-grandmother being a negress, should marry in this country, should we be bound to hold that such a marriage was void? Or, suppose a priest or monk domiciled in a country where the marriage of such a person is prohibited, were to come to this country and marry an Englishwoman, could this Court be called on, at the instance of the husband, to declare that the marriage was null, and to give a legal sanction to his repudiation of his wife? Mr. Dicey, in his excellent treatise on "Domicile," p. 223, answers these questions in the negative, and places these two cases under this head:—

"A marriage celebrated in England is

not invalid on account of any incapacity of either of the parties which, though imposed by the law of his or her domicile, is of a kind to which our Courts refuse recognition."

But on what principle are our Courts to refuse recognition, if not on the basis of our laws? If this guide alone be not taken, it will be free to every Judge to indulge his own feelings as to what prohibitions by foreign countries on the capacity to contract a marriage are reasonable. What have we to do, or, to be more accurate, what have the English tribunals to do, with what may be thought in other countries on such a subject? Reasons may exist elsewhere why coloured people and white should not intermarry, or why first cousins should not. But what distinction can we properly draw between these cases? And why are they not both to be regarded in the same light here—namely, that as they are alike permitted by our laws, we cannot recognise their prohibition by the laws of other countries as a reason why we should hold that such marriages cannot be contracted here? Of the cases cited on the argument, the only one which I think necessary to mention is that of *Mette v. Mette* (10), where Sir C. Cresswell held, that a domiciled English subject could not marry a deceased wife's sister at the place of her domicile, although by the law of that place the marriage would be good. But Sir C. Cresswell had himself pointed out in *Simonin v. Mallac* (6) the difference between controversies arising in the country where the marriage was celebrated and those arising elsewhere, and his judgment in that case shewed that he considered that the law of the place of celebration must prevail before the tribunals of that place.

Before concluding, I wish to direct attention to the statute law on this subject of the marriage of first cousins. The statute of 32 of Henry 8. c. 38, after reciting that the See of Rome had usurped the power of making that unlawful which by God's law was lawful, and the dispensation whereof they always reserved to themselves, as in kindred or

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affinity between cousins-germayne, and all because they would get money by it, and keep a reputation for their usurped jurisdiction, enacts that all and every such marriage as within the Church of England shall be contracted between lawful persons, as by this Act we declare all persons to be lawful that be not prohibited by God's law to marry, shall be valid. This statute and all the marriage Acts which have since been enacted are general in their terms, and, therefore, applicable to and bind all persons within the kingdom. In the weighty language of Lord Mansfield, "the law and legislative government of every dominion equally affects all persons and all property within the limits thereof, and is the rule of decision for all questions which arise there"—*Campbell v. Hall* (11). Where is the enactment, or what is the principle of English law which engrafts on this statute the exception that it shall not apply to the marriage in England of cousins-german who, by the law of another country, were prohibited from marrying without the dispensation of the Pope? And, further, I would ask, what is the distinction between the prohibition of a marriage unless the consent of a parent be obtained, as in *Simonin v. Mallac* (6), and the prohibition of a marriage unless the dispensation of the Pope be granted, as in this case? And if there be a distinction, which I am unable to perceive, why is greater value to be attached by the tribunals of this country to the permission of the Pope than to that of a father? For the reasons I have given, I hold that the marriage between the petitioner and the respondent was valid, and I dismiss the petition.

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Solicitors—Tamplin & Co., for petitioner; the Queen's Proctor.

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PROBATE. } SMEE AND OTHERS v. SMEE  
1879. } AND THE CORPORATION OF  
Dec. 4, 5. } BRIGHTON.

*Will—Testamentary Capacity—Insane Delusions on one Particular Subject—Capacity apart from Delusions.*

*W. S. was subject to insane delusions on one particular subject. Apart from them he appeared to be perfectly rational, managed his affairs with ordinary prudence, and exhibited in various ways considerable mental capacity. His last will was contested by his next-of-kin on the ground that when he executed it he was not of sound mind. The President, in directing the jury, followed the ruling in Banks v. Goodfellow (39 Law J. Rep. Q.B. 237; Law Rep. 5 Q.B. 549), in which it was laid down that the mere fact that a testator is subject to insane delusions is no sufficient reason why he should be held to have lost his right to make a will, if the jury are satisfied that the delusions have not affected the general faculties of his mind and cannot have influenced him in any particular disposition of his property.*

Mr. William Ray Smees, the testator in this action, was for many years a clerk in the Bank of England, and filled the office of secretary to the "Committee of Treasury." In November, 1852, while on his way to Brighton, an accident occurred to the train in which he travelled. He was thrown violently against the opposite side of the carriage, and the character of his injuries were such that he became incapable of attending to business and had to give up his appointment at the Bank of England in 1854, receiving from the railway company as compensation an annuity of 300*l.* a year for life. He married in July, 1854. His father, William Smees, died in November, 1858, leaving a will whereby he disposed of his property, which was considerable, and whereof he appointed his three sons, Alfred, Frederick, and William, the testator, executors. Communications passed between the brothers on the subject of the will; and in a letter written by the testator on the 4th of February, 1859, there appeared the first trace of the insane delusions which

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had taken possession of his mind. The character and extent of these delusions are shewn in the following letter, written by him to the late Prince Consort, and the memorial to Her Majesty the Queen, enclosed in it:—

"To his Royal Highness the Prince Consort, K.G., Windsor Castle.

"2, St. Edmund's Terrace, Regent's Park,  
"December 22nd, 1859.

"Illustrious Prince,—I address to your Royal Highness this letter, enclosing a memorial to the Queen, because Her Majesty might deem it to be the most considerate and the most respectful.

"I write under the deep conviction that the kindly feelings of Her Majesty will prompt and her sound sense will guide to a course that will produce good out of the evil therein detailed.

"Her Majesty may think that the love and affection universally entertained by her people for her person and Throne will not be diminished by kindness shewn to me, and that his history, with warm acknowledgments, will record her helping hand spontaneously held out to restore the deeply wounded feelings of a most unfortunate man.

"I have the honour to be your Royal Highness's most humble servant,

"Wm. Ray Smee."

"To Her Most Gracious Majesty, Victoria, Queen of Great Britain and Ireland.—

The humble memorial of William Ray Smee, of No. 2, St. Edmund's Terrace, Regent's Park, London, sheweth,—

"1. Until a very recent period, your memorialist thought himself to be the eldest child of Mr. William Smee, of the Bank of England, and his conduct as a son was dutiful, considerate and affectionate.

"2. Memory, however, has now brought a knowledge of circumstances which renders this supposed parentage more than doubtful, and induces him to think he is in some way connected with your Majesty's family.

"3. Your memorialist, when quite young, remembers walking with Master Alfred Smee and the nurse. There was a crowd of people looking at some show.

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They all at once turned to her and demanded to know which was the Prince, and on being told your memorialist, they escorted him home with loud hurrahs.

"4. King George 4. came to see your memorialist when living at Camberwell. He was but a little boy. The King walked into the parlour from the garden. His Majesty took a chair, balanced it on one leg, looked under, round, and up and down the chair, then fixing his eyes upon him, said, after a little pause, somewhat contemptuously, 'What do you call this?' 'A chair.' The King, still keeping his eyes fixed, replied, 'This thing a chair; a chair, do you call it?' Astonished, your memorialist asked, 'Can you not sit upon it?' The King seemed moved, did not again speak, but sat down, took him upon his knee, and heard him read. Some time afterwards Mrs. Smee came in, when the King with much feeling patted your memorialist upon the head, and said, 'Poor boy, poor boy, get on with your learning; a great destiny is preparing for you, although you do not know it.'

"5. Your memorialist at this period was remarkable for the quickness and rapidity with which he acquired knowledge. He was at the top of the school, and at the end of the half-year all the boys escorted him in triumph. The master said he had never met with a boy more full of promise.

"6. When your memorialist became about eleven years of age his proficiency at school ceased. Every morning Mr. William Smee administered to him drugs that made him very sick, and during the day deprived him of his proper quantity of nourishment, and prohibited him from eating any animal food.

"7. When this conduct first commenced a lady spoke to your memorialist as he was standing in the road opposite his house. Her kind words and manner are now distinctly remembered; she asked him whether he had enough to eat. He wished to screen Mr. William Smee, and did not like to tell a stranger how sadly he was treated, and replied he had. But on leaving her, felt very sorry for what he said.

"8. This concealment, so kindly meant,

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was most of all disastrous to your memorialist, as he then received less and less food, lost his memory and strength, and became half an idiot; subsequently, more food was given him, and he partly recovered; yet, when again sent to school, he was a totally changed boy, very nervous, and learning very slow.

"9. When about thirteen years of age your memorialist came to live in the Bank of England, and he was again drugged with medicines administered by Mr. William Smee. At school he sat for weeks doing nothing, and your memorialist remembers a visit from a gentleman (and, although not certain, yet he thinks he was addressed as Sir Henry Alford), who heard him read, and who appeared satisfied on finding he could not comprehend what he read. Yet this gentleman seemed anxious and uncomfortable, and said the memory, artificially taken away, might come back, and if so he was ruined.

"10. Within six months of this period he was called away from school to be introduced to a gentleman whom Mr. William Smee merely called 'a great man.' Your memorialist met him in Finsbury-circus, and all three walked up and down there, and the 'great man' asked all sorts of questions about him in his presence. He was dressed, not like a gentleman, but a well-to-do mechanic. On a sudden, the great man exclaimed, 'I am discovered; see if the gentleman just passed turns back.' He turned. 'I must be off,' he said, 'I must not be seen again,' and he disappeared, walking at a very rapid pace. Your memorialist now remembers much of the conversation, and regrets to say the great man in the mechanic's dress had the well-known face of the Duke of Wellington.

"11. About a year from this time a gentleman called upon your memorialist and said a sum of money was coming to him, and required him to appoint a trustee. With great form, Mr. William Smee was appointed; but your memorialist has never received either principal or interest, and there is no mode of getting it except by public trial, and it may be better to go without even a very large sum of money than bring these circumstances before the world.

"12. Your memorialist, thus continually drugged and deprived of his fortune, became at seventeen years of age a mere tool in the hands of Mr. William Smee—made completely ignorant of the past; and all his ideas and previous views in life having been thus taken away, he was compelled to accept a situation in Mr. William Smee's department of the Bank of England.

"13. When eighteen years of age, Mr. William Smee came quite excited to your memorialist and said, 'There is a report a prince is a clerk in my department, and he is employed in the annuity office.' Your memorialist observed he was engaged in that office and should be glad to know his name. Mr. William Smee seemed embarrassed, and made no answer. That evening he was again drugged, and until a few days ago all knowledge of the circumstance was obliterated.

"14. Thus was your memorialist made like a youth born at eighteen years of age. His mind a blank, yet it became a creative mind, and even then, if left alone, he would have made friends and would have risen in the world. But this was not permitted, and your memorialist constantly found himself thwarted by some unknown hand. Many instances of this could be mentioned. Two schemes of public importance, which required two Acts of Parliament to complete them, were suppressed, and the only reason your memorialist had given him was that they would not be allowed to go before the House of Commons with his name attached.

"15. About seven years ago your memorialist met with a railway accident, which made him very ill, and compelled him to give up his situation as secretary to the Committee of Treasury at the Bank of England, and obliged him to live much in the country. It, however, caused blood to flow from the head, and this has, at length, so far relieved the brain that memory, which was thought might return, has actually done so. Mr. William Smee was perfectly aware this result might happen, for four years before his death, when walking with him, he said, as if thinking about it, 'As soon as I perceive he knows I shall die.'

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"16. Mr. William Smee in his last illness, when alone with your memorialist, made many strange remarks, three of which ought to be mentioned. First, he said, 'Every trouble experienced by him has been made to happen by deep design for a great object.' Second. That the railway accident would cause him to become abler and better than he had ever been for reasons he knew nothing about.' Here Mr. William Smee paused and seemed absorbed in thought. After a few minutes he addressed your memorialist thus,—'William, you are a man of the highest character, and I now perceive this knowledge cannot be kept from you.' Third. And, wonderful to relate, one morning, Mr. William Smee, with a manner and look that can never be forgotten, exclaimed—these are his exact words—'Extraordinary and unheard-of means have been adopted to keep him down, or he must have come to the throne.'

"17. These observations would indicate that disease and great age had impaired the faculties of Mr. William Smee. Your memorialist tried to establish this, as he wished to upset the will made at this period. But all those who had opportunities of judging were of opinion his mind was even clearer and stronger than before his illness.

"18. Your memorialist is a person probably not unlike your Majesty's family. In Paris on two occasions he was told he belonged to the royal family of England, and his denial was hardly believed. Even in London he has more than once been taken for the Duke of Cambridge.

"19. Throughout life your memorialist has been distinguished by good temper, kindness of disposition, and a certain *bonhomie*; but the foregoing circumstances, the knowledge of which has only come very gradually within the last few days, have greatly pained and wounded him, neither has he any means of ascertaining whether everything is yet known to him.

"20. Your memorialist is now about forty-three years of age, and although he hopes now to become, with respect to his brain, like other men, yet he is in very

delicate health and has a very sensitive mind.

"Your memorialist, therefore, humbly prays your Majesty to be graciously pleased to take some notice of him, and to cause the remainder of his days to be passed in honour and amid the charms of the best society; and your memorialist, as in duty bound, will be for ever grateful.

"William Ray Smee.

"December 22, 1859."

There was every reason to believe that the testator laboured under those delusions with varying intensity down to his death, but they were not manifested in his conduct. He managed his affairs with ordinary prudence, and for several years he took an active part in the discussions of some of the leading topics of the day, among others the repeal of the malt duty, upon which he wrote a pamphlet of considerable ability. In June, 1859, he made a will, prepared by his solicitor, by which he bequeathed the whole of his property (about 12,000*l.*) to his wife absolutely, and appointed her sole executrix. In April, 1867, he made a second will, and by it cut down the gift to his wife to a life interest in his estate, and gave the residue to the mayor, aldermen and burgesses of the borough of Brighton in trust for the establishment in the Royal Pavilion of a free public library for the inhabitants and visitors of Brighton. The will was all in his own handwriting; it was executed by him at Coutts's bank, in the presence of two of the clerks, and the box in which it was found at the bank, where he had deposited it, also contained copies of the letter written by him to the Prince Consort and the memorial addressed to Her Majesty.

The Corporation of Brighton propounded the will of 1867, and Mrs. Smee, the widow of the testator, the will of 1859; and the plaintiffs, the next-of-kin, contested the validity of both papers, on the ground that when they were executed the deceased was not of sound mind. The issues raised on the pleadings were tried before the President and a special jury on the 4th and 5th of December, 1879.

*Dr. Deane* (with him *Searle* and *Rigg*), for the plaintiffs.

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*The Solicitor-General (Sir H. Giffard)* (with him *Grady* and *Bayford*), for the widow.

*Inderwick* (with him *Finlay*), for the Corporation of Brighton.

THE PRESIDENT (SIR JAMES HANNEN), in summing up the evidence to the jury, directed them as follows:—The period of the testator's life with which we have to deal is from 1852 down to 1867, the period within which he made the two wills in question. In 1852 he met with the accident on the railway, but the consequences of that accident, grave as they were, do not appear to have manifested themselves for a considerable time afterwards. He married in 1854, and it has not been suggested that he was not at that time capable of contracting marriage. In 1858 his father died. Whether his father's death had anything to do with exciting the morbid condition of his mind does not appear, and is immaterial to the enquiry; but upon that occasion he manifested delusions which it is not disputed possessed his mind from that time forward—it was said even down to his death; at any rate, long after 1867. The particular kind of delusions it is important to bear in mind. He had an idea that he was the son of George 4.; that when he was born a large sum of money was placed in his father's hands in trust for him; that he had been robbed by the diversion of that trust fund from him by his father; and that all that his father really had to give to his brothers was a sum of 1,000*l.* each, the rest of the considerable property (some 50,000*l.*) left by him and divided by will between his children being part of the imaginary trust fund to which he believed he alone was entitled. He made a will in June, 1859, and a later will in April, 1867. By the later will, with which we have first to deal, he left his property to his wife for her life, and after her death he left the whole of it to found a free public library for the use of the people of Brighton. The question is, whether that will can be deemed to be the will of a sane man. The law on the subject is this:—The fact that a man is capable of transacting business, to whatever extent that may go, however

complicated the business may be, and however considerable the powers of intellect it may require, does not exclude the idea of his being of unsound mind. A man may be a good carpenter and follow his calling, and yet his mind may be tainted with insanity to such an extent that he may be held irresponsible for a crime on the ground that he did not know the nature of the act he committed. A very few years ago you may have seen confined in Bethlehem Hospital a man who had been acquitted of crime as being insane, but in the hospital he carried on his profession of a painter, and painted pictures that commanded considerable prices in the market. His insanity in no way interfered with his technical skill as a painter—it in no way interfered with his power of composing a picture. Therefore, all the arguments addressed to you on the subject of the testator's capacity to deal with complex subjects, to write pamphlets, and to make calculations, have nothing to do with the question whether he was of unsound mind or not. He was admittedly of unsound mind, because shewn by that which is the most conclusive symptom and evidence of unsoundness, namely, the presence of delusions—that is to say, ideas which we cannot conceive any rational man entertaining. Then arises another question, as to which undoubtedly there has been difference of opinion between eminent authorities on the subject. Stating the case broadly, it might be said that a few years ago the general current of opinion was this: that if a man's mind were unsound in one particular, then, the mind being one and indivisible, it must be taken that his mind was altogether unsound, and, therefore, that he could not be held capable of performing an act rationally, such as the making of a will. A different view has prevailed in later years, and I have no hesitation in saying that that later view is the one I approve of, and which I propose to lay down for your guidance. It is this: that if the delusions cannot reasonably be conceived to have had anything to do with the power of the deceased of considering the claims of his relations and the manner in which he should dispose of his property, then the

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presence of a particular delusion would not incapacitate him from making a will. But it is obvious that that is an extremely delicate and difficult investigation. I should say, in the first place, that you must bear this in mind—that anyone who is entitled to call in question the validity of a will is entitled to put the person who alleges that the will was made by a capable testator upon proof that the testator was of sound mind at the time he executed it. The burden of proof rests upon those who set up the will, and particularly that burden rests upon the persons propounding the will when it has been shewn that there was undoubtedly in some particular unsoundness of mind on the part of the testator.

You have, therefore, to be satisfied from the evidence that has been offered by those who propounded the will of 1867—and the same observation applies to the earlier will also—you have to be satisfied by that evidence that the delusions under which the testator laboured were of such a character that it cannot reasonably be supposed they had had anything to do with the disposition of his property. As I have observed, however, that is a delicate and difficult investigation. It may be illustrated by a reference to the physical world. There may be a little crack or flaw in some geological stratum. It may be of no importance in itself—it may be nothing more than a chink through which water filters into the earth; but by experiment it may be shewn that it has a direct influence upon the volume, or colour, or chemical qualities of the stream that issues from the earth miles and miles away. So with the mind. Upon the surface all may appear perfectly clear—a man may be able to do business and so forth, but there may yet be some idea through which in the recesses of his mind an influence is produced on his conduct in other matters. You have to say whether or not the flaw or crack in the testator's mind was of that character that, though it might not be seen on the surface or on the face of the document before you, it had an effect upon him when dealing with the disposition of his property, and making the bequest to the

Corporation of Brighton. He had an idea that he was the son of George 4., and might not that have had an effect upon his mind when he was considering what he should do with his property? It is for you to say. It is perfectly clear that the testator was thoroughly of unsound mind in one particular, and it is for you to say whether the character of his unsoundness did not shew a possibility and probability of connection between his will and the delusions under which he suffered—namely, that he was connected with the man who had taken such deep interest in the town of Brighton. If that be the view you take of the matter, unless your mind is satisfied that it could not reasonably be supposed that there was any connection between the delusion and the bequest in the will, then the burden of proof will not have been supported by those who propound the will, and your verdict in that case must be against the will. The case is undoubtedly different in degree with regard to the earlier will. The earlier will, being in favour of his wife, appears to be unconnected with his delusions. But the capacity required of a testator is this, that he should be able rationally to consider the claims of all those who are related to him, and who, according to the ordinary feelings of mankind, are supposed to have some claim to consideration when dealing with the disposition of property after one's death. It is not sufficient that the will upon the face of it should be what might be considered a rational will. We have to go below the surface and consider whether the testator was in such a state of mind that he could rationally take into consideration not merely the amount and nature of his property, but the claims of those who, by personal relationship or otherwise, had claims upon him. In dealing with the matter you must consider the testator's relations with reference to his brothers. He believed that his brothers had, by the fraud of his father, been put in possession of two-thirds of property which belonged to him. His brother Alfred, in a letter in reply to one from the testator in which the claim was first hinted at, treated the

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matter somewhat lightly, and it appeared from the evidence of Mr. Hutchinson Smee that there was in consequence a coolness between the brothers, and that for many years the testator ceased to visit his brother. If that were the state of his mind, believing that he had been defrauded by his father of a sum approaching 50,000*l.*, and defrauded for the benefit of his brothers to the extent of two-thirds of that sum, it is for you to say whether his delusion can be treated as wholly unconnected with the will in which he left all of his property to his wife and left nothing under any contingency to his brothers or sisters. The subject is a difficult and delicate one to determine, but it is one in which I have no doubt the best solution will be found by a tribunal like a jury. It being conceded that the testator was undoubtedly of unsound mind, are you satisfied that when he made either of the wills he was capable of dealing with the subjects before him entirely free from the influence of the delusions under which he suffered? If the evidence does not satisfy you that he was so free, your verdict should be against the wills.

The jury, without leaving the box, found against both wills.

The COURT pronounced against the papers; but allowed the plaintiffs' and Mrs. Smee's costs out of the estate.

*Inderwick* asked that the Corporation of Brighton might also be allowed their costs.

THE PRESIDENT (SIR JAMES HANNEN).—I am of opinion that the question was one which the Corporation of Brighton cannot be considered as to blame for having raised it. But that is not sufficient to entitle them to costs. They were seeking a money benefit; they have failed, and I cannot allow them to diminish the estate. I cannot allow them their costs, but I do not condemn them in costs.

Solicitors—T. H. Devonshire, for plaintiff; Tilleard & Co., agents for J. A. Freeman, Brighton, for Corporation; J. A. Rose, for widow.

ADMIRALTY. }

1879.

Nov. 4, 18. }

THE CARTSBURN.

*Practice—Bringing in Third Parties—Damage by Collision—Order XVI. rules 17, 18, 20, and 21.*

*When, upon the application of the defendant, in an action in rem for damage by a collision, a third party is brought into the action under Order XVI. rule 17, with liberty to defend and be bound, as between himself and the defendant, by any decision the Court may come to as to the cause of the collision, the defendant, even if he does not appear at the trial of the action, will be bound by such decision.*

This was a motion by the owners of the vessel *Cartsburn*, to strike out so much of a judgment as declared that they were not entitled to any contribution or indemnity against a third party, or as decided anything between themselves and such third party, or gave directions consequent upon such declarations or decisions.

*Phillimore*, in support of the motion.

*Myburgh*, contra.

*Our. adv. vult.*

The facts and details of the case are fully set out in the following judgment of the Court:—

SIR B. PHILLIMORE (on Nov. 18).—The question now to be decided arises under the rules relating to third parties to an action comprised in Order XVI. of the Rules of the Supreme Court.

A collision took place between two vessels, the *Slavia* and the *Cartsburn*, on the 4th of May last, in Penarth Roads, Cardiff. At the time of the collision the *Slavia*, which is owned by the plaintiff, was lying at anchor, and the *Cartsburn*, which is owned by the defendants, was in tow of a steam tug named the *Leader*, owned by Andrew Bain.

The plaintiff commenced an action in rem against the *Cartsburn* in the District Registry at Cardiff, but the action was shortly afterwards transferred to the principal registry of this Court, and appearances were entered for both parties. On

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the 10th of June there came before me in chambers a summons issued by the defendants, on which the following order was made:—

“The Judge, having heard both solicitors, gave leave to the defendants to issue a notice to the owners of the vessel *Leader*, that they claim to be indemnified by the owners of the said vessel in respect of all damages and costs proceeded for in this action, or incident thereto, and he directed the said defendants to file their preliminary act within three days.”

On the 13th of June the defendants' preliminary act was filed, on the 14th the plaintiff's statement of claim was delivered, and on the 18th what is known as a third party notice was, together with a copy of the statement of claim, served by the defendants on Andrew Bain, the owner of the tug *Leader*. This notice, and the service of it, appear in all respects to have been in conformity with Order XVI. rule 18. On the 25th of June an appearance in the action was entered on behalf of Andrew Bain, and on the 27th, on the application of the defendants, the following order was made by me:—

“The Judge having heard counsel for plaintiff and defendants, owners of the *Carlsburn*, ordered that Andrew Bain, of Newport, Monmouth, owner of the steam tug *Leader*, the party served with notice under Order XVI. rule 17, be at liberty to appear and defend, being bound, as between him and the said defendants, by any decision the Court may come to in this action.”

The next day, on the application of counsel for Andrew Bain, the words “as to the cause of the collision,” were added to the order which I have just read.

Such order, as amended, was duly served upon Andrew Bain. The case came on for hearing in Court on the 30th of June, but after two of the plaintiff's witnesses had been examined, it was adjourned. On the 12th of July the Registrar, having heard the solicitors for the plaintiff and Andrew Bain, directed Andrew Bain to deliver his statement of defence within a week, and appointed the 6th of August for the trial. On the 19th of July the statement of defence of Andrew Bain, the

owner of the steam tug, was delivered to the plaintiff's solicitors, who filed printed copies of it on the 2nd of August, four days before the trial. In this statement of defence the *Slavia* was charged with neglect which led to the collision, but blame was also imputed to the *Carlsburn*, who, it was alleged, disobeyed the orders given her from the steam tug.

Andrew Bain did not deliver to the solicitors for the defendants, owners of the *Carlsburn*, any pleadings or serve them with notice of trial; but they received on the 30th of July a notice of trial fixed for the 6th of August, purporting to be addressed to them, and to the solicitors for Andrew Bain.

The trial took place as appointed on the 6th of August, the plaintiffs and Andrew Bain appeared, and produced evidence, but the defendants, the owners of the *Carlsburn*, did not appear.

The minute of the judgment given is as follows:—“The Judge, being assisted by Captain T. N. Were and Captain G. C. Burne, two of the Elder Brethren of the Trinity Corporation, and having heard counsel for the plaintiffs, and for Clarkson and Co.'s parties, pronounced the collision in question in this action to have been occasioned solely by the fault or default of the master and crew of the vessel *Carlsburn*, and condemned their bail in the said damages and in costs, and he referred the said damages to the Registrar, assisted by merchants, to assess the amount thereof.”

The Judge further pronounced that the defendants, the owners of the *Carlsburn*, were not entitled to any contribution or indemnity against the co-defendants, the owners of the steam tug *Leader*, in respect of the said damages or costs, and he condemned the said defendants and their bail in the costs incurred by the said co-defendants.”

The present application, on the part of the owners of the *Carlsburn* now, is to strike out so much of this judgment as declares that such owners are not entitled to any contribution or indemnity against the third party, Andrew Bain, or decides anything as between the said owners and the said Andrew Bain, or gives directions consequent upon such declarations or

*The Carlsburn.*

decisions; and to direct that the costs of this application be paid by Andrew Bain. The owners of the *Carlsburn* appear to have no substantial grounds for their application. They introduce the owner of the steam tug as a party to the action, and they were, or ought to have been aware, that the whole question, as between the three parties, would be disposed of at the trial. The object of these rules, relating to the introduction into a suit of third parties, prescribed by the Judicature Act of 1875, was, to adopt the words of the Master of the Rolls in *The Swansea Shipping Company v. Duncan* (1), "To prevent the same question being tried twice over where there is any substantial question common, as between the plaintiff and the defendant in the action, and as between the defendant and a third person; and in such a case the third person is to be cited to take part in the original litigation, and so to be bound by the decision on that question once for all."

If the *Carlsburn* were to be allowed now to raise an issue between herself and the steam tug as to the facts of the collision, the result would be precisely what it was the intention of the Legislature to obviate. The case would substantially be heard twice over.

With regard to the technical point of procedure that has been raised, I cannot see that there has been any material departure from the course prescribed by Order XVI. rules 17, 18, 20 and 21.

The order of the 27th of June, giving to Andrew Bain, the owner of the tug, liberty to defend, the notice of trial of the 30th of July, addressed to Andrew Bain, as well as to the other defendants, and his statement of defence, imputing blame to the *Carlsburn*, which was filed on the 2nd of August, were sufficient notice to the owners of the *Carlsburn* that they would have to meet at the trial on the 6th the cases set up, both by the *Slavia* and by the steam tug. They did not choose to appear; it would seem as if they meant, in the event of the *Slavia* being found to blame, to have the advantage of this finding, and, on the other hand, if the *Carlsburn* was found to

blame, to deny that she was affected by the sentence. I dismiss this application with costs.

Solicitors—Fielder & Sumner, agents for T. H. Stephens, Cardiff, for the owners of the *Carlsburn*; Clarkson, Son & Greenwell, agents for G. C. Downing, Cardiff, for the owners of the *Leader*; Ingledew & Ince, agents for Ingledew, Ince & Vachell, Cardiff, for the owners of the *Slavia*.

ADMIRALTY. }  
1878.  
Aug. 7. }

THE SOPHIA COOK.

*Bottomry Bond—Interest.*

*The Admiralty Division will not allow larger interest than four per cent. on a bottomry bond, from the date when it becomes payable until the date of payment, even if a larger amount is stipulated for in the bond.*

This was an action on a bottomry bond by the assignee of such bond, by which it was, *inter alia*, stipulated that "an additional payment of ten per cent. on the sum advanced" should be paid if the sum lent, and the maritime interest, were not paid within five days after the arrival of the ship.

The owners of the *Sophia Cook* admitted the validity of the bond, except so far as related to the interest after it became due.

Phillimore, for the plaintiffs.  
Clarkson, for the defendants.

SIR R. J. PHILLIMORE.—This additional premium of ten per cent. cannot be allowed. It has been the general practice to allow only four per cent. from the date when the bond becomes due until payment, and I cannot permit any infraction of the practice to be introduced.

Solicitors—Pritchard & Sons, agents for Bateson & Co., Liverpool, for defendants; Speechly, Mumford & Co., agents for J. W. Carr, Liverpool, for plaintiffs.

NOTE.—*The Cecelie* (March 11, 1879). In this case the Judge followed the case of the *Sophia Cook*, and decreed that interest at four per cent. was payable from the date at which the money became due, where no interest was stipulated for in the bond itself.

(1) 45 Law J. Rep. Q.B. 688; Law Rep. 1 Q.B.D. 644 (649).

ADMIRALTY. }  
1879. } THE CITY OF MECCA.  
Nov. 11, 25. }

*Foreign Judgment—Action in rem—Jurisdiction of the Admiralty Division.*

*The Admiralty Division has jurisdiction to enforce by an action in rem a judgment delivered by a foreign tribunal in an action in rem; for it is the duty of an Admiralty Court of one nation to enforce the decree of that of another nation, which duty arises out of international comity.*

This was an action by the owners of the steamship *City of Mecca* to set aside a writ of summons, a warrant of arrest and other proceedings in an action in rem brought to enforce a judgment in rem given against the *City of Mecca* in the Tribunal of Commerce at Lisbon.

*Butt* and *Clarkson*, in support of the motion, argued that the action in England is on a judgment, and that a personal action in the nature of the old actions of debt and *assumpsit* was the proper means by which to enforce a foreign judgment. Such an action of debt cannot give a maritime lien, which is the foundation of an action in rem. They referred to *Russell v. Smyth* (1), *Williams v. Innes* (2), *Schibsy v. Westenholtz* (3), *Godard v. Gay* (4), *Phillimore's International Law* (5).

*Webster, Hornby* and *G. Bruce* argued that the sentence of a foreign Admiralty Court was binding on the Admiralty Courts of this country, and that the Admiralty Division had now the same jurisdiction as any other Division of the High Court of Justice so as to be able to enforce a foreign judgment. They referred to *Castrigue v. Imrie* (6), *The Duchess of*

*Kingston's Case* (7), *Murado v. Gregory* (8), *The Young Mechanic* (9), *Taylor v. Carryl* (10), *Ewers v. Jones* (11).  
*Butt* in reply.

*Cur. adv. vult.*

SIR R. J. PHILLIMORE (on Nov. 25).—This is a case in which the representatives of the steamship *Insulana* have brought an action in rem against the steamship *City of Mecca*.

In the writ of summons it is stated that the plaintiffs' claim is upon a judgment of the Tribunal of Commerce of Lisbon by which the Court determined that the *City of Mecca* was alone to blame for a collision, and ordered the defendants to pay to the plaintiffs the loss sustained by them by reason of the said collision, and that the plaintiffs claim 25,000*l*.

In the affidavit to institute this suit it is stated by the solicitor for the plaintiffs that he is informed that after the said collision the *City of Mecca* put into Lisbon, and that proceedings were there instituted against the said steamship, which subsequently left Lisbon without giving security in the said proceedings; also that the owners of the *City of Mecca* appeared to and contested the said proceedings, and that the decree of the Tribunal of Commerce was confirmed by the final Court of Appeal in Portugal.

A warrant of arrest was taken out in this Court by the plaintiffs, and the vessel has been released on bail.

A motion has been made by the owners of the *City of Mecca* to set aside the writ of summons issued in this action and all subsequent proceedings on the part of the plaintiffs, also the bail bond executed on behalf of the defendants in this action, and that the bail may be discharged, and that the plaintiffs be condemned in the costs of the action, on the ground of the writ having been improperly issued.

The question to be decided is, whether this Court can and ought to enforce the sentence of a foreign Admiralty Court by

(1) 9 *Mec. & W.* 810.

(2) 13 *Mec. & W.* 628.

(3) 40 *Law J. Rep. Q.B.* 73; *Law Rep.* 6 *Q.B.* 155.

(4) 40 *Law J. Rep. Q.B.* 62; *Law Rep.* 6 *Q.B.* 189.

(5) *Vol. iv.* (4th ed.), p. 739.

(6) 39 *Law J. Rep. C.P.* 350; *Law Rep.* 6 *H.L. Cas.* 414 (446).

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(7) *Smith's L.C.* 7th ed. 828.

(8) 1 *Vent.* 32.

(9) 2 *Curt.* 100.

(10) 20 *Howard* 583.

(11) 2 *Ld. Raym.* 934.

*The City of Mecca, Adm.*

a proceeding *in rem*. It appears to me expedient to make two preliminary observations.

First, I express my opinion that whatever authority upon this subject was incident to this Court before the Judicature Act belongs to it now.

Secondly, that the Court has always exercised a jurisdiction founded upon international comity with respect to the execution of the sentences of foreign Admiralty Courts.

I proceed to consider the authorities on this subject in their chronological order, as it is important to shew that the duty of the Admiralty Court in England to enforce the decrees of a foreign Admiralty Court has been steadily recognised for a great number of years. The first authority I shall refer to is *Weir's Case*, in the King's Bench, 5 James 1, A.D. 1668 (12). If a Frieslander sues an Englishman before the Governor in Friesland, and recovers a certain sum, and the Englishman not having enough to pay for it comes to England, whereupon the Governor sends his "Lettres missives" to England, asking all magistrates of that kingdom to cause execution of the said judgment, "le judge del Admiraltie poet executer cest judgment per imprisonment del partie et il ne serra deliver per le common ley; car ceo est per la ley de nations que la justice d'un nation serra aidant al justice d'auter nation et l'un de executer le jugement de l'auter; et la ley d'Angleterre prist notice de c'est ley et le judge del Admiraltie est le proper magistrate pur cest purpose, car il solment ad execution del ley civil deins cest relme." (*sic.*)

This case is referred to in Molloy, *De Jure Maritimo*, vol. ii. p. 340. The next authority is that of Sir Leoline Jenkins, Judge of the High Court of Admiralty in the reign of Charles 2. This authority is one to which very great weight has always been ascribed by Lord Stowell and other eminent civilians as both witnessing to the practice of the Courts administering the civil law and setting forth the principle upon which that practice was founded. Sir Leoline Jenkins (*Wynne's*

*Life*, vol. ii. p. 762), writing in 1666 A.D., says of the practice of Civil Law Courts that they ordinarily intermeddle not with nor inspect the merits of those sentences that are given without the limits of their jurisdiction. "Tis a ruled case," he says, "that one Judge must not refuse upon letters of request to execute the sentence of another foreign Judge when the persons or goods sentenced against are within his jurisdiction; and if he do, his superior must compel him to it, else it is a sufficient ground for reprisals against the territory." The next authority is only four years later. It is the case of *Murado v. Gregory* (8), 21 Charles 2, A.D. 1670. In that case the plaintiff had sued in the English Admiralty for enforcement of a sentence given in a Spanish Admiralty Court. A prohibition was granted by the King's Bench, but only on the grounds that the sentence of the Spanish Court was not complete, but was only an award, and could not therefore be sued upon, and the original contract being one made on land ought not to be sued upon in the Admiralty. The following proposition was advanced in argument by Finch, the Solicitor-General, and agreed to by the Court: "When sentence is obtained in a foreign Admiralty one may libel for execution thereof here, because all the Courts of Admiralty in Europe are governed by the civil law, and are to be assistant one to another though the matter were not originally determinable in our Court of Admiralty;" and *Weir's Case* (12), before referred to, was cited. The next authority occurs in the year 1704. It is the case of *Ewers v. Jones* (11), on which case Lord Chief Justice Holt, in giving judgment, says: "The sentence of a Civil Law Court in a foreign realm shall be executed in a Court of the same nature here proceeding after the same law, and no prohibition and without prohibition, because the temporal Courts proceed by a due law; and we must give credit to the sentence, as it was adjudged in the time of Charles 2 between *Hughs and Cornelius*." To these authorities may now be added a decision of the Supreme Court of the United States of America. In the case of *Penhallow v.*

*The City of Mecca, Adm.*

*Doane's Administrators* (13), decided in A.D. 1795, it was said by Mr. Justice Tredell: "It was clearly shewn at the bar that a Court of Admiralty in one nation can carry into effect the determination of the Court of Admiralty in another;" and again, by Mr. Justice Cushing: "Courts of Admiralty can carry into execution the decrees of foreign Admiralty Courts, as seems to be settled law and usage. Dr. Browne, in his *Compendious View of Civil and Admiralty Law*, a work dedicated to Lord Stowell, says (vol. ii. p. 120): "The last branch of Admiralty jurisdiction I shall mention is the enforcing judgments of foreign Courts." He then proceeds to cite the opinion of Sir Leoline Jenkins which I have before referred to. I find also in the American work by Mr. Dunlap, entitled *Admiralty Practice* (p. 63, ed. 1850): "A Court of Admiralty in one country can carry into effect the determination of a Court of Admiralty in another, as well as its own judgments." Again, in Parsons, *Maritime Law* (vol. ii. p. 541), also the work of an American writer of eminence, it is laid down that "Admiralty Courts in different countries sometimes enforce each other's decrees, or complete in one country what is done in another." A consideration of these authorities and the principle upon which they rest leads me to the conclusion that it is the duty of one Admiralty Court—a duty arising from international comity—to enforce the decree of another upon a subject over which the latter had jurisdiction. I do not think it necessary to enter into a consideration of all the cases decided by the Common Law Courts as to the effect of foreign judgments in this country. The general principle of recognising and giving effect to such judgments is now admitted by these Courts. I did not indeed understand it to be denied by Mr. Butt that the Admiralty Court has power to execute the sentence of a foreign Admiralty Court. His objection is as to the mode by which it is sought to enforce it. He contends that a proceeding *in rem* can only be instituted where there is a maritime lien, and that the foreign judg-

ment does not confer such a lien. I am of opinion that it is the duty of this Court to act as auxiliary to the Portuguese Admiralty Court, and to complete the execution of justice which, owing to the departure of the ship, was necessarily left unfinished by that Court. In other words, it is my duty to place the English Court in the position of the Portuguese Court after its sentence has been given against the defendants.

With respect to the motion now before me, I must take the facts from the indorsement on the writ of summons and the affidavit in support of it; and from these I gather that there was substantially a judgment *in rem* in a Portuguese Court. There is no doubt that a collision such as there was in this case creates a maritime lien. In support of this it is unnecessary to cite authorities. With regard to the further proposition that a proceeding for the enforcement of a maritime lien is a proceeding *in rem*, the following remark of Lord Chelmsford in *Castrique v. Imrie* (6) appears to be applicable:—"This order for the sale of the ship, whatever may be thought of the original proceeding, appears to be a judgment *in rem*. Without, however, looking to this ultimate order, I think that the original proceeding, being for the purpose of enforcing the maritime lien which by the law of all foreign codes founded on the civil law exists for money advanced for repairs and necessities on the voyage, was a proceeding *in rem*."

This Court is now called upon to be an assistant to the enforcement of a judgment *in rem* given by a Portuguese Court. With respect to the objection that no direct precedents have been cited in support of the course taken by the plaintiffs, it must be observed that until a recent period there were no reports of the Courts exercising jurisdiction in accordance with the civil law, that is to say, the Ecclesiastical and Admiralty Courts. Moreover, it is to be remembered that, speaking generally, any Court which exercises a jurisdiction *in rem* has the *res* or some substitute for it in the shape of a security within its reach, and the wrongdoer is seldom able to evade compliance with the order of the Court. This Court, on the

*The City of Mecca, Adm.*

failure of the owners to pay for the damage alleged to be done by their ship, would arrest that ship and enforce the judgment against the *res* by sale. The occasion for the exercise of such a power of arrest seldom arises, though in a recent case, *The Troubadour* (14), in 1878, the Court directed the issue of a warrant after judgment for the purpose of enforcing payment of the award of salvage; and there have been several instances in which a ship has been arrested or re-arrested in consequence of the bail becoming insolvent. In fact, what the Common Law Courts do indirectly by implying the contract, the Admiralty Court does directly without any such implication, on the grounds of international comity. It is clearly for the interests of justice that this Court should exercise the jurisdiction as prayed, and having its hand upon the *res* should not take it off until the sentence be executed; otherwise the wrongdoer might remove his ship out of its jurisdiction, and by keeping out of Portuguese waters defeat the just rights of the party who is suffering the wrong. It is to be borne in mind that the ship the *City of Mecca* is liable for the damage done by her to the plaintiffs' property in a sense and in a manner that no other ship of the same owner would be liable. Upon the whole, I do not see why, if this Court might ever have enforced a foreign Admiralty judgment—and the authorities are ample upon this point—it might not enforce that judgment against the ship, and give that remedy *in rem* which is one of the special advantages incident to the jurisdiction to the Court of Admiralty. I reject the motion without costs.

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Solicitors—Pritchard & Sons, for plaintiffs; Gelatly, Son & Warton, for defendants, under protest.

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(14) Not reported.

DIVORCE. }  
1876. }  
May 24. }

SANTO TEODORO v. SANTO  
TEODORO.

*Jurisdiction—English Marriage—Foreign Domicile of Husband—Stipulation for English Residence by Wife, an Englishwoman.*

*An English lady of fortune consented to marry the eldest son and heir of a Neapolitan nobleman, on condition of their always having after marriage a residence in England, and of their residing there six months, at least, in each year. The marriage was celebrated in August, 1854, in England. There were five English trustees of the marriage settlements, which contained a proviso that they should be construed according to the law of England. A few months after the marriage a London residence was taken and furnished by the parties, which they occupied for six months in each year, with two or three exceptions, from 1855 to 1872, living for the remainder of the year in apartments in the palace of the husband's father at Naples, or at other places on the Continent. In 1872, the lady separated from her husband in consequence of his cruelty and of his adultery with an opera singer, and she continued up to the hearing of her petition to reside in their London residence. In 1873 the husband's father died, when he succeeded to his title and estates and palace at Naples, and since then he had resided sometimes at Naples, but principally with the opera singer at other places on the Continent. The petition and citation were served on him at Paris, and he had entered no appearance:—Held, that the Court had jurisdiction to dissolve the marriage.*

This was a petition by the Duchess de Santo Teodoro, of 36 Lowndes Street, Hyde Park, London, for a dissolution of her marriage with the Duke de Santo Teodoro, a Neapolitan nobleman, by reason of his adultery and cruelty. The petition and citation were served on the respondent at Paris, and he had entered no appearance.

*Dr. Spinks and Dr. Tristram* appeared for the petitioner.

In opening the case, Dr. Spinks, after

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stating shortly the facts he should prove, directed the attention of the Court to the fact that the respondent was a Neapolitan nobleman, and that as his property and his palace were in Italy, and as since the petitioner separated from him in 1872, owing to his marital misconduct, he had resided at Naples, but principally at other places on the Continent, he could not be said to have now an English domicile or residence. The petitioner, however, was an English subject of large fortune, and only agreed to marry the respondent on his promising that they should have a permanent residence after marriage in England, and should reside in England six months in the year at least. The marriage was celebrated in England with a view to such residence in England. The stipulation as to residence had been adhered to from 1855 up to the separation in 1872, and since that time the petitioner had continued to reside in their English home. There was also a proviso in the marriage settlements that they should take effect and be construed as English settlements. The circumstances requisite to give the Court jurisdiction to dissolve an English marriage and to establish a testamentary domicile were not the same—*Brodie v. Brodie* (1), and he should submit that the facts of the case were quite sufficient to warrant the Court in pronouncing the decree prayed for.

The material facts proved were as follows:—The petitioner was the only child and heiress of Captain Locke, of Norbury Park, Surrey, an officer in the Life Guards, who died shortly before her birth. The petitioner became a ward of the Court of Chancery in England, and was brought up in England and on the Continent by her mother, Mrs. Locke, who was a daughter of Admiral and Lady Elizabeth Tollemache, of Helmingham, in Suffolk. In 1849, she married Lord Burghersh, who died in 1851. On his death the petitioner, being still a minor, again became a ward of the Court of Chancery in England. In 1853, being with her mother on a visit to Naples, she met there the respondent, then the Marquis Caracciolo,

who was residing with his father, the Duke de Santo Teodoro, at Naples. The petitioner's fortune amounted in value to about 120,000*l.*, and she was also entitled to a jointure of 1,000*l.* a year charged on Lord Westmoreland's estates. The respondent was at this time dependent on an allowance of 1,000*l.* a year, paid to him by his father. The respondent made her an offer of marriage, which she accepted, but subject to the condition that she should always have her home in England, and should reside there six months in the year, to which he at once assented. His assent to this condition was proved by both the petitioner and Mrs. Locke.

The petitioner returned to England, and some months after her return, namely, on the 31st of August, 1854, the marriage was celebrated, first, at the Roman Catholic Church in Cadogan Place, London, and subsequently on the same day at St. James's Church, Piccadilly. Just before the marriage the respondent and Mrs. Locke were engaged in looking out for a London residence, but were unable to meet with one to suit them until after the marriage.

There were two ante-nuptial settlements executed by the petitioner and respondent, of which Lord James Butler, Lord Dungarvan, the Right Hon. Cowper Temple, Mr. Charles Pascoe Grenfell and Mr. Henry Greville were trustees, by one of which the respondent engaged to charge certain estates in Italy, which would devolve on him at his father's death, with the payment of an annuity of 500*l.* to the petitioner in the event of her surviving him, and by the other the first life income of the petitioner's property was made payable to the respondent for life, subject to the payment of 1,000*l.* a year and of her jointure to the petitioner for her separate use. There was a clause in the settlements, "that the provisions in the deed charging the Italian property, and the provisions as to trustees contained in the deed settling the petitioner's property, should be construed according to the laws of England and the meaning which would be given to them the same as in England."

After the marriage the petitioner and

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the respondent went abroad for the winter, and in the following year, 1855, they returned to England, when a house, 36, Lowndes Street, Hyde Park, was by an arrangement between them and Mrs. Locke, who lived with them, taken as their home in England. The Duke and Duchess furnished the house, and from 1855 to 1872 paid half the rent, the rates and taxes, and contributed more than their respective shares towards the other household expenses. During these years, with two or three exceptions, the petitioner and respondent resided in this house for about six months in each year, and spent the remainder of the year in apartments at the respondent's father's palace at Naples, or at other places on the Continent.

The marriage proved to be an unhappy one. In 1859 and subsequently the respondent treated the petitioner with cruelty. Early in 1860, whilst they were staying at Naples, he acted towards her with great violence, and threatened to place her in a convent, and she having ascertained that by the Neapolitan law he had power to do so, and being apprehensive of his putting his threat into execution, application was made through her friends to Lord Palmerston, who was then Prime Minister, to give her as a British subject protection, and his Lordship thereupon instructed the British Minister at Naples to give her refuge as an English subject at the British Legation. She took refuge there and remained there under the protection of the British flag for three months. Whilst there, some gend'armes were sent to take her away, but the British Minister refused to give her up. After remaining there for three months she resumed, through the intervention of friends, cohabitation with her husband, and lived with him until 1872, when she left him in consequence of his unkindness and threats, and more particularly in consequence of his having formed an improper intimacy with an opera singer, with whom adultery was charged. She had since continued to reside at 36, Lowndes Street, Hyde Park, and the respondent had resided apart from her at different places on the Continent. The respondent's

father died in 1873, when he succeeded to his estates in Italy and to his palace at Naples. Between 1871 and the date of the petition he had committed adultery with the opera singer at Naples, Milan, and Paris.

During the petitioner's examination, and after she had given evidence as to her family, her position and fortune, to her having accepted the respondent on condition of their having an English home, and always residing for six months in the year, to the celebration of the marriage in England, to a house, No. 36, Lowndes Street, Hyde Park, having been taken for them in 1855, to their having furnished it, and shared with Mrs. Locke the large proportion of the expense of the establishment, and to their having resided together there for about six months in the year from 1855 to 1872 with two or three exceptions, and to her having continued to reside there separate from her husband ever since—

[SIR R. J. PHILLIMORE (interposing) said—I am quite satisfied at present that the Duke is subject to the jurisdiction of the Court.]

*Dr. Spinks.*—Quite so. Counsel then produced the marriage settlement, and referred the Court to the clause in it providing that it should be construed as are English settlements.

[SIR R. J. PHILLIMORE.—The contract is made in England, there is a long cohabitation in England, the husband has been served, and I do not think that this is material.]

The petitioner having proceeded with and concluded her evidence, Mrs. Locke corroborated her, and other witnesses were examined in support of the charge of cruelty. The depositions of the witnesses, taken on commission at Naples, Florence, Milan and Paris, were then put in and read, proving the respondent's adultery at those places.

SIR R. J. PHILLIMORE.—*Dr. Spinks*, I do not think I need trouble you further. The evidence of adultery is plain and indisputable. The evidence in regard to cruelty requires, in my judgment, more consideration, but I am perfectly satisfied from the evidence which has been given

*Santo Teodoro v. Santo Teodoro, Div.*

that the cruelty was of the kind which the law requires in order to give the right to a separation from a husband, that is to say, cruelty rendering cohabitation unsafe and insecure. That cruelty was undoubtedly condoned by the subsequent cohabitation of the Duchess with her husband, but it has been revived by his subsequent adultery, which is proved beyond all doubt. The petitioner in this case is entitled to a decree nisi with costs against her husband, and I therefore pronounce a decree nisi with costs.

Solicitors—Baxter, Rose & Norton.

ADMIRALTY. }  
1879. } THE SIR CHARLES NAPIER.  
Dec. 16. }

*Demurrer—Action for Wages—Set-off and Counter-claim by Shipowner—Insurance.*

*To an action for wages a defendant may set up as a counter-claim, a claim for damage to the ship in consequence of the negligence of the master, the plaintiff in the action, although the defendant has been paid by insurers in respect of such damage.*

This was an action for wages and disbursements, brought by the late master of the ship *Sir Charles Napier* against her owner. The defendant in his statement of defence pleaded, by way of set-off and counter-claim, that the *Sir Charles Napier* had been lost through the negligence of the master, and claimed damages from him in respect of such loss. To this the plaintiff replied, that the defendant had been paid by underwriters for the loss of the *Sir Charles Napier*, and was not entitled to bring this claim against the plaintiff, as he was doing so as trustee for the underwriters. The defendant demurred to the reply, on the ground that the defendant had a legal right to bring such a counter-claim.

Clarkson, in support of the demurrer, argued that, under the Rules of the Su-

preme Court of Judicature Acts, 1873 and 1875, Order XIX. rule 3, this was a counter-claim, which the Court would entertain.

Hilberry, in support of the reply, argued that the defendant set up this counter-claim in a representative capacity, and that in equity such a set-off would not be allowed. He referred to *Rauson v. Samuel* (1), *Clark v. Cort* (2), *Faw v. McIver* (3) and *The London, Bombay and Mediterranean Bank v. Narroway* (4). And, therefore, under the present procedure the Admiralty Division could have no larger jurisdiction than a Court of Equity could have had—Judicature Act, 1873, s. 24. sub-sec. 1 (5). He also referred to *Bristow v. Needham* (6), *McDonald v. Carrington* (7) and *Watson v. The Mid-Wales Railway Company* (8).

Clarkson, in reply.

SIR ROBERT PHILLIMORE.—I have listened with attention to the argument which has been addressed to me on behalf of the plaintiff, and it appears to me that there is this fallacy running through it, that I must assume that, if the allegations of the paragraph of the reply demurred to are substantiated by evidence, the claim made by the defendant for damages for the loss of his ship by the negligence of the plaintiff, must be held to have been made by the defendant in a representative capacity. Now I cannot see my way to a decision that, even assuming all the allegations in the reply to be true, the claim made by the defendant by way of set-off and counter-claim, is a claim by him in any other capacity than that of a shipowner, the same capacity in which he is sued. Some confusion seems to have arisen from the proper distinction not having been drawn between what was a matter of set-off before the Judicature Act

- (1) 1 Cr. & Ph. 161.
- (2) 1 Cr. & Ph. 154.
- (3) 16 East, 130.
- (4) 42 Law J. Rep. Chanc. 329; Law Rep. 15 Eq. 93.
- (5) 36 & 37 Vict. c. 66.
- (6) 7 Man. & G. 648.
- (7) 48 Law J. Rep. C.P. 49; Law Rep. 4 C.P. D. 28.
- (8) 36 Law J. Rep. C.P. 282; Law Rep. 2 C.P. 393.

*The Sir Charles Napier, Adm.*

and what may be included under the word "counter-claim," and several cases have been cited in support of the proposition that the defendant is not entitled to claim by way of counter-claim any damages in a representative capacity. I do not, however, understand, that the principle involved in these cases is disputed; but it has been contended—and I think rightly—on behalf of the defendant that they are not applicable to the present case, where the set-off claimed arises out of the personal contract of service between the master and the ship-owner. I must, therefore, sustain this demurrer with costs.

Solicitors—F. W. & H. Hilbery, for plaintiff;  
W. W. Wynne, for defendant.

ADMIRALTY. }  
1879. } THE CONSETT.  
Nov. 25. }

*Practice—Costs—Damage to Cargo by Collision—Reference.*

*Where the owners of a ship and the owners of cargo on board such ship unite in bringing an action for damages against another ship, in consequence of a collision between the two vessels, and at the hearing both ships are held to blame, and no order is made as to costs, the owners of the cargo are nevertheless entitled to be paid by the defendants such costs of the reference as arise out of proof of any claim which they may have in respect of such cargo.*

This was a motion by the owners of cargo lately laden on board a ship named the *Jessore*, for an order to allow them the costs of certain affidavits used at a reference before the Registrar. The question arose out of the following facts. A joint action had been brought by the owners of the *Jessore* and the owners of the cargo lately laden on board that ship, against the *Consett*, for damages arising out of a collision between these two ships. At the hearing the Judge, assisted by two of the Elder Brethren of the Trinity House, found that both vessels were to blame, and, as usual under such circum-

stances, no order was made as to costs, and the damages were referred to the Registrar to be assessed by him. At this reference certain affidavits relating solely to the cargo were used, and it was the costs in respect of these which the owners of the cargo now desired to obtain.

*Butt* and *Phillimore*, in support of the motion, argued that there was a great distinction between owners of cargo and of the ship. In an action by the owners of cargo alone against the ship, if both vessels were held to blame, the cargo owners would be entitled to their costs—*The City of Manchester* (1), and the costs in respect of these affidavits must be dealt with on the same principle.

*Clarkson*, for the owners of the *Consett*, argued that the decision in *The City of Manchester* (1) did not apply where owners of ship and owners of the cargo joined in one action.

Secondly, by making no order as to costs at the hearing, the Judge had already adjudicated upon the matter.

*Butt*, in reply.

SIR R. J. PHILLIMORE.—The finding of the Court in the principal action does not affect the question of the costs of the reference before the Registrar; nor can it properly be said that the Court has adjudicated upon the question now before it. When I come next to consider the points, divested of these considerations, it is clear that, as a matter of fact, the owners of the *Jessore*, and the owners of the cargo on board of her, by joining in one action, caused the general expenses of the suit to be considerably lessened, and therefore the fact of such consolidation does not prevent the owners of the cargo from being entitled to any quite separate expenses arising out of the claims which they placed before the Registrar in respect of their cargo. Accordingly I think that they are entitled to receive from the owners of the *Consett* the costs of these affidavits.

Solicitors—Stokes, Saunders & Stokes, for plaintiffs; T. Cooper & Co., for defendants.

(1) 46 Law J. Rep. P. D. & A. 70.

PROBATE. }  
 1879. } JENNER v. FINCH AND OTHERS.  
 Nov. 7. }  
 Dec. 22. }

*Will—Two Wills—Executors nominated in first—No Executor named in second, and no Words of Revocation—Principal Legatees the same in both Wills—Revocation by Implication—Ambiguity—Parol Evidence.*

*Testatrix executed two wills. In the first she appointed executors and disposed of the residue; the second contained no appointment of executors, or words of revocation; in both the principal legatees were the same, and the residue was not specifically disposed of:—Held, that there was that amount of ambiguity on the face of the papers as to warrant the admission of parol evidence in order to ascertain whether the testatrix intended the last paper in substitution for the first, or that both together should constitute her will.*

Emma Selina Loring, late of Sydney Place, Bath, in the county of Somerset, the deceased in this case, died on the 2nd of February, 1879. She had made a will on the 1st of July, 1876, by which she left her watches, jewels, trinkets, ornaments, wearing apparel, books, manuscripts, carriages, harness and stable furniture to her cousin, Constance Elizabeth Jenner; and her plate and plated articles to her cousin, Captain Hector Macneil, and the following legacies:—To her cousin, E. H. Loring, 5,000*l.*; to the said Hector Macneil, 1,000*l.*; to her cousin Walter Macneil, 1,000*l.*; then followed a number of pecuniary legacies to friends, servants and charities, and she bequeathed "all the share and interest which shall belong to me at my death, in which my grandmother, Mrs. Jamieson, now has a life interest, to my cousin, Constance Elizabeth Jenner; and she bequeathed the residue of her personal estate to the said Hector Macneil, for his own use and benefit, and she appointed the defendants executors.

On the 2nd of February, 1879, the testatrix dictated to her cousin Constance, the following paper:—"I wish the will I made destroyed." This having been

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reduced to writing was signed by the testatrix in the presence of the plaintiff and another witness, but it was not duly attested by them. On the same day the testatrix again dictated to her cousin the following paper:—

2, Sydney Place, Bath.

Rev. E. H. Loring . . .	£10,000
Arthur H. Loring . . .	1,000
Ned Loring . . .	1,000
Alice Master . . .	500
Lisette Denny. . .	500
Ethel Rosina Keele . . .	200
Annabel Skipper . . .	200
Mrs. Reeks, for her life . . .	100
Norman Winckisworth . . .	100
All my mother's money to my cousin, Constance Elizabeth Jenner.	
All the Loring plate to Hector Macneil.	
Pearls and diamond set to Mary Macneil.	
Jane P. Halsted, 400 <i>l.</i>	
All sundries, carriages, books, &c., to Constance E. Jenner.	

The paper was duly executed by the testatrix in the presence of two witnesses who duly attested it.

The question raised on the pleadings between the parties was whether this document was to be admitted to proof alone or together with the will of July, 1876.

The case was heard before the Court itself on the 7th of November, 1879.

*Dr. Deane* (with him *C. A. Middleton*), for the plaintiff.

*Inderwick* (with him *Searle*), for the defendants.

*Lawrence, Meyrick, W. Phillimore* and *J. F. Skipper*, for legatees.

*Our. adv. vult.*

The following judgment was (on Dec. 22), delivered by

THE PRESIDENT (SIR JAMES HANNEN).—Emma Selina Loring, the deceased in this case, died on the 2nd of February, 1879. She had made a will on the 1st of July, 1876, by which she left her watches, jewels, trinkets, ornaments, wearing apparel, books, manuscripts, carriages, harness and stable furniture to her cousin Constance Elizabeth Jenner; and her plate and plated articles to her cousin, Captain Hector Macneil; and the following legacies:—To my cousin, E. H. Loring, 5,000*l.*; to the said Hector

E

*Jenner v. Finch, Prob.*

Macneil, 1,000l.; to her cousin, Walter Macneil, 1,000; then followed a number of pecuniary legacies to friends, servants and charities, and she bequeathed "all the share and interest which shall belong to me at my death, in which my grandmother, Mrs. Jamieson, now has a life interest, to my cousin, Constance Elizabeth Jenner," and she bequeathed the residue of her personal estate to the said Hector Macneil, for his own use and benefit, and she appointed the defendants executors.

In the same house in which the testatrix was lying "sick unto death," her grandmother, Mrs. Jamieson, was also residing, but unable from infirmity to communicate with the testatrix otherwise than by writing. On the 1st of February she wrote a letter to the testatrix reminding her of the necessity of making her will, and advising certain dispositions "as the Macneils are so well off." Shortly after this the testatrix dictated to her cousin Constance, the plaintiff, who was assisting in nursing her, the following words:—"I wish the will I made destroyed." This having been reduced to writing was signed by the testatrix in the presence of the plaintiff and Charlotte May, the nurse, but they did not attest it at the time. An interval of twenty minutes or half a hour elapsed before the witnesses put their names to the paper, and they did so in the adjoining dressing-room, though with the door open, yet out of sight of the testatrix, and without her being conscious that they were engaged in any act connected with the paper she had herself signed. In no sense can it be said that the witnesses signed in the presence of the testatrix, and this document is therefore inoperative as a testamentary instrument.

After signing the paper expressing her wish that the will should be destroyed, the testatrix again dictated to her cousin, who, at her dictation, wrote as follows: I need not read the legacies. It will be seen on examination that the legacies mentioned in this paper are some of them to the same persons and for the same amount as in the former will—some for larger amounts and others for smaller amounts, while a few are omitted. This

paper was duly executed by the testatrix in the presence of two witnesses, who duly attested it. It is clear that this document must be admitted to proof as testamentary, but the question remains, whether it is to be admitted to proof alone or together with the will of July, 1876?

It was submitted by counsel for the plaintiff that the case was governed by *Dempsey v. Lawson* (1), and that it followed from that decision that the paper of the 2nd of February should alone be admitted to proof. I do not, however, think that *Dempsey v. Lawson* (1) is an authority upon the point which is raised for consideration on this occasion. In *Dempsey v. Lawson* (1) I relied solely on the contents of the second instrument, taken in connection with the earlier one and with the facts with reference to which the second was made, and which might, therefore, afford a guide to the testatrix's meaning. In the present case, although I think that the will of the 2nd of February, 1879, does contain some internal evidence of the intentions of the testatrix that it should be in substitution of the first, yet I think it desirable, if I can properly do so, to have recourse to external evidence, to shew whether or not the testatrix intended the last instrument to constitute her sole will, and so by implication to revoke the first. This makes it necessary that I should consider the question which I advisedly left undetermined in *Dempsey v. Lawson* (1), whether such external evidence is admissible, and under what circumstances.

By the Wills Act (1 Vict. c. 26. s. 20), it is enacted: "No will or codicil or any part thereof shall be revoked otherwise than aforesaid (i.e. by marriage) or by another will or codicil executed in manner hereinafter required." This leaves untouched the question, what will being duly executed will revoke an earlier one? I think it clear that no express words of revocation are necessary. The authorities appear to me to establish that revocation by implication is sufficient. On this point I refer to what I said in *Dempsey v. Lawson* (1).

(1) 46 Law J. Rep. P. & M. 23; Law Rep. 2 Prob. Div. 98.

*Jenner v. Finch, Prob.*

The question what instruments are to be admitted to probate as together or separately constituting the testator's last will, is solely for the Court of Probate, as it was formerly for the Ecclesiastical Court. In considering this question the Prerogative Court did in some circumstances admit parol evidence with respect to the *factum* of the instrument in order to investigate *quo animo* the act was done by the testator. The subject was very fully considered by Sir H. Jenner in *Thorne v. Books* (2), and he came to the conclusion that where there is something on the face of the instrument raising doubt or ambiguity as to whether it was intended by the testator to be in substitution for or addition to a previous will, the Court is justified in having recourse to external evidence to ascertain the testator's intention. In the case before him the learned Judge thought there was no such doubt or ambiguity; but the case of *Meihuen v. Meihuen* (3), commented on and not disapproved of by Sir H. Jenner, may be referred to as shewing what doubt arising on the face of the instrument taken in connection with the facts known to the testator will be sufficient to justify the admission of external evidence. There the testator having made one codicil, under which his wife and daughters took certain benefits, after the marriage of one of the daughters made a codicil, in which, after reciting that he had made a provision for this daughter, he proceeded to make dispositions in favour of the wife and daughters differing from those in the first codicil. There was nothing making it absolutely impossible that the testator meant these dispositions to be cumulative, but as Sir H. Jenner points out, it did appear that if both the codicils had been acted upon "the property of the deceased would not have been equal to the payment of all the legacies that had been given." It was upon this state of facts that Sir J. Nicholl said—"The first instrument remains uncanceled, and there are no revocatory words in the second. It is contended that the Court has no power to enquire further, but the same rules do

not apply in a case relating to the *factum* of the will which would apply if the enquiry were concerning the construction of it. In the Court of Probate the whole question is one of intention. The *animus testandi* and the *animus revocandi* are completely open to investigation in this Court. It is admitted that if there is doubt on the face of the instrument the Court may admit parol evidence." The same learned Judge's remarks to the same effect in *Greenough on Motion* may also be referred to.

Accepting, then, as correct Sir H. Jenner's limitation of the power of this Court to admit parol evidence to those cases in which the instrument itself (in connection with the facts known to the testator) gives rise to doubt, I proceed to consider in what respect this instrument of the 2nd of February, 1879, taken in connection with the state of the testator's family, and the nature and extent of her property, gives rise to doubt whether she intended it to be an addition to her previous will.

In the first place, there is that element of doubt which was present in the case of *Meihuen v. Meihuen* (3), and which was pointed out by Sir H. Jenner as justifying parol evidence, namely, that the property of the testatrix would be wholly insufficient to meet the legacies if those given by the last instrument are to be considered cumulative to those given by the first.

Can anything be more improbable than that the deceased young lady intended to dispose of property substantially twice as much as she possessed? It is not impossible, in some circumstances, that a testator might contemplate dying worth more than he possessed at the time of making his will, but there is nothing in this case to suggest the possibility of the testatrix contemplating such a contingency. There is also the further fact that some of the dispositions of the instrument of the 2nd of February must have been intended as in substitution for, and not in addition to, the dispositions of the first. I refer especially to the bequest to the present plaintiff in these words, "All my mother's money to my cousin, Constance Elizabeth Jenner." It was not disputed that this

(2) 2 Curt. 799.

(3) 2 Phill. 426.

*Jenner v. Finch, Prob.*

includes the same property as the testatrix had by her first will given to the plaintiff, under the description of "the share and interest, &c." in which her grandmother had a life interest. These, and some minor matters appearing on the face of the instrument, such as the repealed gift of the carriages, books, &c., to the plaintiff, and the gift of all the Loring plate to Capt. Macneil, appear to me to give rise to that amount of doubt which justifies the Court in having recourse to external evidence, in order to ascertain whether the testatrix intended this instrument to be an addition to her will, or in substitution for it, in whole or in part. But when the external evidence is admitted in this case, it becomes clear, beyond the possibility of doubt, that the testatrix did not intend this document to be an addition to her will, but did intend it to be in substitution for it, for she was under the impression that she had effectually put an end to her will by directing it to be destroyed. The changes in the dispositions of the first will effected by the second to the disadvantage of the Macneil family, were no doubt made in consequence of her grandmother's letter. It is clear, therefore, when the external facts are looked at, that she intended the paper of the 2nd of February to be her sole will, and by it, and by no other instrument, intended to dispose of her property. I therefore hold that, by implication, it revoked the will of 1876, and that it alone should be admitted to probate.

The litigation having arisen from the state in which the deceased left her testamentary papers, and the interests of the parties represented at the hearing being different, the costs of all parties must be borne by the estate.

Solicitors—Collyer, Bristow & Co., for plaintiff;  
Clarke, Woodcock & Ryland, for defendant;  
Pike & Son, and Barnard & Co., for parties  
cited.

ADMIRALTY. }  
1880. }  
Feb. 3. }

THE DON RICARDO.

*Practice—Release of Ship—Unreasonable Objection to Bail—Costs and Damages—Security for Costs.*

*When a plaintiff in an action in rem arrests a ship, and although substantial bail is offered, refuses to release her, and unreasonably requires an enquiry to be made as to the means of the securities, he will be liable to pay damages and costs for so doing. Security for costs will not necessarily be required from a mate who is a foreigner and a plaintiff in an action for wages.*

This was an application by the defendants, the owners of the *Don Ricardo*, for damages and costs for unreasonably delaying the release of this vessel, and objecting to the bail which was offered. The plaintiff, previous to the commencement of the action, had served as mate on board the *Don Ricardo*, and had now commenced a suit *in rem* for his wages, and arrested the ship. The owners duly entered an appearance, and offered to give bail for the amount of the claim, but the plaintiff entered a *caveat* against the release of the ship, and required the bail to justify before the Registrar, and meanwhile detained the *Don Ricardo* under arrest. The Registrar having examined the proposed securities, reported that "the securities were persons of considerable means, and that the objections were vexatious and groundless." The defendants now applied for damages occasioned by the detention and objection, and the costs of these proceedings, and also for security for costs from the plaintiff, as he was a foreigner.

*Olarkson*, in support of the motion, cited *The Evangelismos* (1), *The Corner* (2), and *The Strathnaver* (3); as to security for costs, *The Franz and Elise* (4).

*Verney*, *contra*, relied also on the above cases, on the ground that *crassa negligentia*, amounting to malice, must be

(1) 1 Sw. 378.

(2) Br. & L. 161; 33 Law J. Rep. Adm. 17.

(3) Law Rep. 1 App. Cas. 58.

*The Don Ricardo, Adm.*

shewn to have been the cause of the detention, and that this element was absent here, as the plaintiff had merely made a mistake, and had acted with *bona fides* throughout. As to security for costs, no security ought to be required.

SIR ROBERT PHILLIMORE.—I am satisfied that I ought in the special circumstances of this case, and bearing in mind the decision of Dr. Lushington in the case of *The Corner* (2), to condemn the plaintiff in damages for the detention of the *Don Ricardo*, and in the costs occasioned by the entry of the *caveat* and the objection to the bail. The amount of the damages will therefore be assessed by the Registrar, assisted by merchants. With regard to the question as to whether the plaintiff should be made to give security for costs, I have been referred to the case of *The Franz and Elise* (4), but there the plaintiff had been master of the vessel proceeded against. I think that it would be hard, in the circumstances of this case, to make the plaintiff, who was only a mate on board the *Don Ricardo*, give security for costs. I shall therefore exercise my discretion, and make no order as regards security for costs.

Solicitors—Sorrrell & Sons, for plaintiff; Clarkson, Son & Greenwell, for defendant.

PROBATE. }  
1879. } In the goods of JOHN WHEELER.  
Dec. 9. }

*Will*—Name of Second attesting Witness cut off, but Piece preserved—Probate.

Testator cut from the will the portion of the document on which the name and address of the second attesting witness were written. The excised part was also mutilated, but the name and address of the witness remained legible upon it, and it was found with the will in the testator's writing desk. The Court being satisfied that the name had not been removed

*animo revocandi*, decreed probate of the instrument.

Semble, that the names of the attesting witnesses are an essential part of the will, and that their removal from the will *animo revocandi* will render it inoperative.

John Wheeler, late of Over Fairley, in the county of Southampton, a retired domestic servant, died on the 14th of July, 1879. He executed his last will (he made several) on the 31st of October, 1877. The names of the attesting witnesses—

C. D. W. Fowler, solicitor, Southampton.

A. W. Watts, clerk to Messrs. W. & H. G. Best, solicitors, Southampton, were written below the attestation clause.

On the death of the testator the will was found in his writing desk, in which he usually kept his papers of importance. The portion of the document containing the name, &c., of the second attesting witness was cut or torn from the document. The excised part was also mutilated, but there remained on it the words "A. W. Watts, clerk to Messrs. W. & G. Best,                    ora, Southampton," perfectly legible. This excised part was found with the will in the desk. It was arranged between all the parties interested that the question whether or not the will had been revoked should be determined by the Court on motion.

*Odgers*, on behalf of the executors, moved for probate of the will. The tearing of part of a will was not necessarily a revocation of the whole instrument—*In the goods of Woodward* (1); and even if the names of the attesting witnesses were an essential part of the will, the name had been here removed without an intention to revoke. He referred to *Hobbs v. Knight* (2), *Playne v. Scriven* (3), *In the goods of Coleman* (4), 1 Vict. c. 26. s. 9.

Templeton, for the next-of-kin, submitted that the names of the attesting

(1) 40 Law J. Rep. P. & M. 17; Law Rep. 2 P. & D. 206.

(2) 1 Curt. 781.

(3) 7 Notes of Cases, 122.

(4) 2 Sw. & Tr. 314.

(4) Lush. 177, and see *The Zufall*, 44 Law J. Rep. Adm. 16, not cited *arguendo*.

*In the goods of John Wheeler, Prob.*

witnesses were an essential part of the will, and that the removal of either of them effected a revocation of the instrument.

THE PRESIDENT (SIR JAMES HANNEN).—No particular tearing or excision of a will can be defined as in itself establishing that the testator intended by such tearing or excision to revoke the will. It must be taken in connection with the surrounding circumstances in order to determine whether or not the Court shall come to the conclusion that the thing done was done *animo revocandi*. In the present case I have really very few, if any, surrounding circumstances to assist me in coming to a conclusion, but I have to deal with the appearance of the document itself. I certainly am of opinion that the tearing off the names of the attesting witnesses, or the tearing off of but one of the names of the attesting witnesses might be sufficient, taken with other circumstances, to establish that the testator had revoked his will, if the intention so to do accompanied the act; but it is difficult to conceive the idea of a testator destroying a will by merely tearing off the name of one of the witnesses. Certainly the most obvious mode would have been to tear off the names of both of the witnesses which were written upon this fold, or what I may call the natural fold in the paper. I think, therefore, the inference is that some other idea than that of revoking the will was present to the testator's mind when he discriminated between the first and second witness. But the case does not stop there. Apart from the improbability of revocation being intended by this careful way in which he has taken off one witness's name, I have to take into account that this excised name was placed back again with the document, and I cannot conceive with what object he should have put it back again, if his intention in taking it off was to destroy the document. Add to that, that there is a piece cut off from this torn part, but it is done in such a way as to leave the name and address of the attesting witness perfectly legible. That, again, is inconsistent with the idea that it was his intention to revoke the

will. I should myself say that the whole thing may be accounted for in this way, but I only put it forward as an hypothesis. He may have written something on this corner of the paper, and desiring that that which he had written should not appear on the paper he cut the piece off, but afterwards observing that in so doing he had taken off the name of one of the attesting witnesses, he carefully cut out the piece on which he had written something, but left the name of the attesting witness and put it back with the will, in order that it might serve as a complete attestation. I only put that as an illustration, but it shews the way in which it might have occurred. At any rate, I come to the conclusion from the circumstances I have adverted to that this tearing or cutting was not done *animo revocandi*. Therefore I pronounce for the will. It was a question quite proper to be raised, and I must allow the costs of both parties out of the estate.

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Solicitors—Best, Webb & Co.

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PROBATE. } *In the goods of GRIFFITH RICHARD*  
1880. } *JENKINS (deceased).*  
Jan. 13.

*Will—Executor out of Jurisdiction—Grant durante absentia—*38 Geo. 3. c. 87. s. 1; 21 & 22 Vict. c. 95. s. 18.

*One of the executors named in the will proved the paper, and then left the country. The second executor named in the will was also out of the jurisdiction. The Court made a grant durante absentia to a legatee and also one of the next-of-kin to enable her to become a party to a suit in the Equity Division for the administration of the estate.*

Griffith Richard Jenkins, late of Yokohama, Japan, died on the 13th day of December, 1870, after having duly made his last will and testament, bearing date the 23rd day of February, 1867, and on

*In the goods of Griffith Jenkins, Prob.*

the 21st day of April, 1870, made and executed a codicil thereto, whereby he appointed Martin Dohmen, of Her Majesty's Consular Service, Japan, and Thomas Thomas, of Yokohama, Japan, his executors in the place and stead of those whom he had appointed in his said last will.

The testator died possessed of property both in England and Japan. By his will he gave, bequeathed and devised the interest or rental arising from his estate and effects, whether real or personal, of whatsoever description and wheresoever situated, unto his wife Mary Anne Jenkins for her proper use and benefit while she remained unmarried, and in the event of her marriage, then and in that case one-third share only of the aforesaid interest or rental; and in this latter case he directed that the remaining two-thirds of the interest or rental should be disposed of in certain proportions between his brother and two sisters.

A certified copy of the will and codicil was proved in the principal registry by Thomas Thomas, one of the executors, on the 9th of May, 1871, and a grant of letters of administration (with will and codicil annexed) was made to him, with power reserved of making a like grant to Martin Dohmen, the other executor named in the codicil. Thomas Thomas, the proving executor, never acted, and in 1871 he left England for Japan where he is still resident.

Mrs. Jenkins re-married in February, 1878. The *corpus* of the estate not having been disposed of, it became necessary to institute a suit in the Equity Division to have the rights of the parties interested under the will determined, but in the absence of the executor this could not be done until a personal representative of the deceased was appointed.

In these circumstances,

Bayford moved the Court to make to Mrs. Mary Elizabeth Davies, a sister of the deceased and one of the legatees under the will, a grant of administration *durante absentia* for the purpose of being made a party to such proceedings for the administration of the testator's estate as might be deemed advisable.

He referred to 38 Geo. 3. c. 87. s. 1; 21 & 22 Vict. c. 95. s. 18; *In the goods of Grant* (1), *In the goods of Buddy* (2).

J. G. Witt, for the other next-of-kin and beneficiaries, supported the application.

THE COURT made the grant as prayed, on affidavit that the executor in whose favour leave was reserved was also out of the jurisdiction.

Solicitor—J. Knight.

PROBATE. } *In the goods of SARAH*  
1880. } *BLEWITT (deceased).*  
Feb. 3, 10. }

*Will—Interlineations after Execution—*  
*Interlineations initialled by Testatrix and*  
*Signature attested by Witnesses by Initials*  
*—Probate.*

*Two interlineations were introduced into the will after execution and attestation, but the testatrix signed with her initials in the margin opposite them, and the witnesses subscribed their initials in attestation of such signature of the testatrix:—Held, that the interlineations were duly executed, and were entitled to probate as part of the will.*

Sarah Blewitt, late of Chelsham Road, Clapham, in the county of Surrey, died on the 27th of December, 1879, having duly made her last will and testament on the 26th of December, 1879, in words and figures following:—

I, Sarah Blewitt, of, &c., widow, hereby revoke all wills and other testamentary dispositions heretofore made by me, and declare this to be my last will and testament. "I give and bequeath unto Amelia Cooke the sum of 50*l.* and all my wearing apparel." I give, devise and bequeath all "the residue of" my estate, both real and personal, &c., unto John

(1) 45 Law J. Rep. P. & M. 88; Law Rep. 1 Prob. Div. 435.

(2) 41 Law J. Rep. P. & M. 63; Law Rep. 2 P. & D. 330.

*In the goods of Sarah Blewitt, Prob.*

James Grocott, of, &c., "and Thomas Henry Edward Cooke, of &c., their" heirs, executors, and administrators respectively, upon trust, &c., &c. And I appoint the said John James Grocott "and the said Thomas Henry Edward Cooke" my sole executor. In witness whereof, &c.

The will was executed by the testatrix in the presence of Mr. J. D. Nickinson, the solicitor who prepared it, and Mr. C. Rigby Allport, who subscribed it as attesting witnesses.

Immediately after the execution of the will by the deceased, and while the second witness was attesting her signature, the testatrix stated that she should like to appoint Mr. Cooke an executor and trustee with Mr. Grocott, and give a legacy to Miss Cooke of 50*l.* and also her wearing apparel. Thereupon Mr. Nickinson, seeing the difficulty with which the testatrix had signed the will, and fearing that she would die before a codicil could be prepared, carried out her further wishes by interlining them in the will, and after the interlineations (which are marked by inverted commas in the above copy of the will) had been made, the testatrix placed her initials opposite them, and the witnesses subscribed their initials beneath hers in attestation of her signature.

*Bayford* moved the Court to decree probate of the will, with the interlineations, to the executors. They amounted to a re-execution of the will.

*Stevens*, for a legatee, supported the application, and referred to *In the goods of Hind* (1), *In the goods of Christian* (2).

*Our. adv. vult.*

THE PRESIDENT (SIR JAMES HANNEN) (on the 10th of February).—Two interlineations were introduced into the will after execution and attestation, but the testatrix signed with her initials in the margin against these interlineations, and the witnesses subscribed their initials in attestation of this signature of the testa-

trix. The Wills Act, section 21, enacts that no interlineation or other alteration made in any will after the execution thereof shall be valid, unless such alteration shall be executed in like manner as is required to the execution of the will, but the will with such alteration shall be deemed to be duly executed if the signature of the testator and the subscription of the witnesses be made in the margin. The only question then is, whether the signature and subscription by initials only is sufficient?

A mark is sufficient though the testator can write—*Baker v. Dening* (3). Initials if intended to represent the name must be equally good. The language of the Lord Chancellor in *Hindmarch v. Chorlton* (4) seems equally applicable to the testator's signature as to the witness's subscription—"I will lay down this as my notion of the law that to make a valid subscription of a witness there must either be the name or some mark which is intended to represent the name." And Lord Chelmsford says—"The subscription must mean such a signature as is descriptive of the witness either by a mark or by initials, or by writing the name in full." In *Ohristian's Case* (2) the initials of the witnesses were held sufficient. Although if merely placed to attest the alteration they will not serve as an attestation to the will itself—*In the goods of Martin* (5). I am therefore of opinion that the interlineations against which the initials of the testatrix and the witnesses are placed should be admitted to proof.

*Bayford*.—As part of the instrument?

THE PRESIDENT.—As part of the instrument.

Solicitors—W. S. Warmington, for the executors;  
R. Hewlett, for Miss Cooke.

(1) 16 Jurist, 1161.

(2) 2 Robert. 111.

(3) 8 Ad. & E. 94.

(4) 8 H.L. Cas. 167.

(5) 1 Robert. 712.

DIVORCE. }  
1880. } HARVEY, otherwise FARNIE, v.  
April 22. } FARNIE.

*Marriage in England between a domiciled Scotchman and an Englishwoman—Marriage dissolved by decree of Scotch Court by reason of the Husband's Adultery—Validity of Decree.*

A domiciled Scotchman married an Englishwoman in England in 1861. After the marriage he returned to Scotland with his wife and remained domiciled there until after the year 1863, when, on the petition of the wife, the marriage was dissolved by a decree of the Scotch Court by reason of his adultery:—Held, that the decree was valid and binding on the Courts of this country, although the matrimonial offence for which it was granted was one on which a dissolution of marriage by the wife could not be obtained in England.

This was a petition, presented by the wife, for a declaration of nullity, and the question of law to which it gave rise was whether the Court could recognise as valid a decree of a Scotch Court dissolving a marriage celebrated in England between an Englishwoman and a domiciled Scotchman, both domiciled in Scotland at the time the suit was instituted and the decree pronounced, on the ground of the adultery of the husband.

The facts were these. The respondent, Henry Brougham Farnie, by birth a Scotchman, and a domiciled Scotchman at the time of his first marriage, married a Miss Davies, an Englishwoman, in England, on the 13th of August, 1861. After his marriage he returned with his wife to Scotland and remained domiciled there until after 1863, when the wife obtained a decree from the Scotch Court for dissolution of the marriage by reason of his adultery. He then returned to England, and on the 31st of May, 1865, his former wife being still alive, he married the petitioner at All Souls' Church, Marylebone. In these circumstances the petitioner prayed that her marriage with him might be declared null and void.

Benjamin (with him Ffooks, Inderwick, Bayford and Ffooks), for the petitioner.—The Scotch Court could not annul an

English marriage—*Lolley's Case* (1). That case has never been overruled, and has been followed in *Twey v. Lindsay* (2); in *M<sup>r</sup> Carthy v. De Caix* (3); in *Berthwistle v. Berthwistle* (4); *Dolphin v. Robins* (5); *Shaw v. Gould* (6); *Shaw v. Her Majesty's Attorney-General* (7); *Pitt v. Pitt* (8). In *Warrender v. Warrender* (9) the head note is wrong, but this case does not apply, as there the marriage was Scotch.

Deane (with him Winch and Wood), for the respondent, were not called upon.

THE PRESIDENT (SIR JAMES HANNEN).—In this case the respondent, a Scotchman by birth and a domiciled Scotchman at the time of his marriage, married an Englishwoman, a Miss Davies, on the 13th of August, 1861, at Cardigan. Immediately after his marriage he returned with his wife to Scotland, and remained domiciled there until after the year 1863, when his wife obtained in a Scotch Court a decree for divorce upon the ground of his adultery. After the dissolution of the marriage he contracted a second marriage with the petitioner in England in the year 1865, and the petitioner now seeks to have it declared that this marriage was null because the respondent had a wife living at the time, in other words, that the Scotch divorce was inoperative—at least as to England—and therefore the first wife must be held by an English Court to be the respondent's true wife.

The argument which has been addressed to me amounts to this, that because the marriage was celebrated in England it was indissoluble in Scotland, or indissoluble except for some cause for which it could have been dissolved in England. But it is to be remembered that for the

(1) Russ. & R. Cr. Cas. 273.

(2) 1 Dowl. 117, 124.

(3) 2 Russ. & M. 617.

(4) 2 Cl. & F. 571 & 7 Cl. & F. 895; 39 Law J. Rep. P. & M. 81.

(5) 29 Law J. Rep. P. & M. 11; Law Rep. 7 H.L. Cas. 390.

(6) 37 Law J. Rep. Chanc. 433; Law Rep. 8 H.L. Cas. 55-70.

(7) 39 Law J. Rep. P. & M. 81; Law Rep. 2 P. & D. 156.

(8) 4 Macqu. H. L. Cas. 627.

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purposes now under consideration a Scotchman is in precisely the same position as any foreigner, and although when he comes into this country without changing his domicile, as on the one hand he is entitled to the protection of the English law, so on the other he is bound to pay obedience to it—amongst other things he can only contract a marriage here in accordance with the requirements of the English law, yet from the moment that he leaves this country and goes back to his own, he owes no further allegiance to the English law, and from that time forward his rights and duties and *status* can only be regulated by the law of the country of his domicile so long as he remains there.

In this case the respondent married an Englishwoman, but that has no bearing upon this question, because it is clear that the wife acquired the domicile of her husband. This is not a mere fiction, it is the literal and absolute fact. A woman when she marries a man does in the most emphatic manner elect to make his home hers, and accordingly when the respondent returned to his native country with his wife, they took with them, so to speak, their *status* of married persons and entirely withdrew themselves from the English jurisdiction; they took with them everything connected with the marriage, except the superfluous evidence of the parish register, and from that time forth, while the man remained in Scotland, the place of his domicile, English law had nothing whatever to do with him. The Scotch Court therefore was possessed of the entire subject with which it had to deal. Both the man and the woman were there, and their *status* was, as I have said, transferred to that country, because the marriage was entered into with a view to its obligations being discharged in the Scotch home. By the law of Scotland a marriage of this kind, although celebrated in England, can be dissolved by the Scotch Courts—*Warrender v. Warrender* (9). The principles of that decision have been fully expounded by Lord Brougham at pages 532-5 of his judgment, and need no justification from

me. Is this Court then bound to recognise the dissolution of the marriage by the Scotch Court where the contract was entered into in England? From the time when the husband and wife left this country, their connexion with England ceased, and while they remained in the country of the husband's domicile they were subject only to the laws of that country. A sentence of the Court of the domicile, the only jurisdiction to which they were then subject, and the only jurisdiction before which the question of dissolving the marriage could alone be brought, is like a judgment *in rem*. It was not merely a decision *inter partes* but operated upon the *status* itself. It unmade that *status* and rendered the husband, who up to that time had been a married man, an unmarried man, and accordingly, into whatever country he might afterwards go, he carried with him that *status* of an unmarried man which had been constituted by the only Court of competent jurisdiction before which it had been brought, or before which it could then have been brought.

It is perfectly true that in some cases we do not recognise the *status* derived from the country of the domicile where such *status* would interfere with our views of the interests of our country or our subjects, or of morality and the highest justice. I refer, for example, to the *status* of slavery. But a decree of divorce has never been put upon any such ground. It would always have been impossible for us to do so with consistency, especially now since the constitution of this Court, and also previously, inasmuch as divorces even then could have been obtained here although not by an appeal to the ordinary tribunals. When, as in this case, the divorce is decreed by the Court of the country where the parties were domiciled, we have nothing to do with the grounds upon which the tribunals of that country may proceed in declaring what shall entitle the man or woman to have his or her marriage dissolved.

It appears to me, therefore, upon general principles that we are bound to recognise the change of *status* brought about by a decree of divorce in another

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country where that decree applies to the domiciled subjects of that country. But although these are the general principles which govern the subject, I might be bound by some particular provision of the municipal law of England to proceed not in accordance with the generally received principles of jurisprudence, but upon some special ground applicable to England alone. That there is no statute law upon the subject is clear, and the only case that has been referred to as having the effect of compelling me to decide contrary to the principles which it appears to me govern this subject is *Lolley's Case* (1). It is somewhat remarkable that the exact words of the decision in that case have been lost sight of. The Judges held the conviction right, being "unanimously of opinion that no sentence or act of any foreign country or any state could dissolve an English marriage *a vinculo matrimonii*, for grounds on which it was not liable to be dissolved *a vinculo matrimonii* in England." This judgment, like every other, must be taken with reference to the facts upon which it proceeded, and if so considered amounts to no more than this—that no sentence or act of any foreign country or state could dissolve an English marriage such as the one then before the Judges, that is to say, the marriage of two English persons domiciled in England, who had not changed their domicile at the time when the aid of the Scotch Court was invoked to dissolve it. Putting that construction upon it there is nothing to challenge remark in the decision, and yet, although the language of the resolution is most carefully guarded, it has been frequently assumed, and by Lord Brougham particularly, that the Judges decided that an English marriage (whatever may be the true meaning of that term) could not be dissolved at all except in England. But the Judges said nothing of the kind. They said merely that no foreign Court can dissolve an English marriage for grounds on which it was not liable to be dissolved *a vinculo matrimonii* in England. The Judges, therefore, who framed that sentence did not consider that it could be laid down as law that a marriage could not be dissolved in England at all.

It would have been an idle form of words to use if they had not considered that the law of England provided means of obtaining a divorce *a vinculo matrimonii*, although not by the ordinary tribunals, yet by that peculiar and exceptional proceeding before the House of Lords. And, further, their decision leaves open for consideration this most important question, whether an English marriage could not be dissolved by the decree of a foreign Court, provided it proceeded only upon such grounds as would have been recognised as sufficient for dissolving the marriage in England. Much may be said in favour of our recognising in such circumstances the decree of the foreign Court. For assuming that we protect the interests of society in England against the dissolution of the marriage of English persons abroad, for some cause for which it could not be dissolved here, there seems no reason why by the comity of nations we should not recognise the decree of a foreign country which proceeded upon principles in accordance with the English law. Where the parties have not gone abroad for the purpose of defrauding the English law, but being abroad have sought only such remedy as they might have obtained in England, why should not we recognise the sentence of the foreign Court? Many illustrations might be given of hardships from acting upon any other principles. These have been so strongly felt that in the American Courts it is now firmly established that a wife can acquire a domicile apart from her husband for the purpose of instituting a suit against him for divorce. In such a case if the substance is looked at and not the form, it does not matter whether it is said that a wife can acquire a separate domicile for that purpose, or that residence short of domicile under certain conditions shall entitle the wife to institute a suit for divorce. But it might equally be a hardship upon a husband that he should be obliged in all cases to go to the place of his domicile to seek a remedy for the wrong done to him abroad. His residence there might be under conditions which would make it practically impossible for him to come back to England. He might have mar-

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ried a woman in a foreign country, where, though not his domicile, he might have his only means of subsistence. All the evidence of her guilt might be there, and to require him to come back to England for the purpose of seeking a remedy might be in effect to deny it to him altogether. Such a case is not now before the Court. I am merely calling attention to the fact that the qualification of the Judges in *Lolley's Case* (1) points to this, that there may be some instances in which an English marriage may be dissolved by a foreign Court if the proceedings be upon a ground for which the *vinculum* might have been dissolved in England.

Lord Brougham, who was counsel in *Lolley's Case* (1), felt very strongly the hardship of the sentence passed upon his client, and most persons would now agree that it was unduly severe, because the man apparently had acted upon advice that had been given to him, and inasmuch as English persons could go across the border and contract a valid marriage which would have been invalid if contracted in England, he might very well not be able to perceive the distinction between that and going across the border to get a marriage dissolved; and yet Lolley was sentenced to seven years transportation because he did not see that distinction. It is clear that Lord Brougham under the influence of his feelings disparaged this case whenever he had the opportunity, and he also, as it would seem, misconceived it, for he constantly represented it as deciding something more than it did. For instance, in the case of *M'Carthy v. De Caix* (3), he says, "It is fully established by the opinion of the twelve judges, who solemnly decided it after argument, that no proceeding in a foreign Court could operate to dissolve or affect a marriage celebrated in England." Instead of using the words the Judges had used—"an English marriage," he uses the expression "a marriage celebrated in England," and he also leaves out the qualification and represents them to have decided that no proceeding whatsoever in a foreign Court could operate to dissolve a marriage contracted in England. He further says that Lord Eldon was under a misapprehension as to *Lolley's*

*Case* (1). "I find," he says (p. 619), "from the note of what fell from Lord Eldon on the present appeal, that his Lordship laboured under considerable misapprehension as to the facts in *Lolley's Case* (1). He is represented as saying, 'he will not admit that it is the settled law, and that therefore he will not decide whether the marriage was or not prematurely determined by the Danish divorce.' His words are that 'without other assistance I cannot take upon myself to do so.'"

It is probable that Lord Eldon at that time, namely, in 1831, was aware of what the real decision was in *Lolley's Case* (1), and that he had freed himself from the error he had been led into by Lord Brougham, for his Lordship states (at p. 620) that he had furnished Lord Eldon with a note of *Lolley's Case* (1) when the case of *Tovey v. Lindsey* (10) was being argued before the House of Lords. What that note was we see in 1 Dowling's Reports, p. 127. It was in these words—that the Judges "were unanimously of opinion upon the point reserved that a marriage solemnised in England was indissoluble by anything except an act of the Legislature." I have shewn that this is incorrect.

With regard to the case of *M'Carthy v. De Caix* (3) I am bound to say I do not thoroughly understand the principle upon which it proceeded. In that case, however, Lord Brougham took the opportunity of shewing that *Lolley's Case* (1), from his point of view, was a *reductio ad absurdum*. But it appears from Lord St. Leonards' observations in the case of *Geils v. Geils* (11) that he was counsel in the case of *M'Carthy v. De Caix* (3), for the unsuccessful representative of the husband; and he says (p. 262), "My recollection enables me to say that the question of the effect of the divorce was not argued in that case, but the Lord Chancellor took up the point, and upon the strength of *Lolley's Case* (1), he held that an English marriage could not be dissolved by a Danish Court, and that our law could not recognise such a dissolution." I have not the pleadings in that case before me, but it is evident that the bill

(10) 1 Dowl. 117, 131.

(11) 1 Macq. H.L. 269,

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had been so framed that it did not raise this point which Lord Brougham took, for if it had necessarily raised the question, it is inconceivable that Lord St. Leonards would not have taken it. But be that as it may, it amounts simply to this, that Lord Brougham, upon a misconception of what the Judges had decided in *Lolley's Case* (1), insisted that it was still law, and that it led to those conclusions which it was perfectly plain from what he said in *Warrender v. Warrender* (9) he thought absurd. What he really thought of *Lolley's Case* (1) as he understood it, and as it has been interpreted before me to-day, is clear from his observations in *Warrender v. Warrender* (9). Lord Lyndhurst, while he condemned what he termed the dangerous and precipitate course of Lord Brougham in speaking of the decision in *Lolley's Case* (1), agreed with Lord Brougham that the Scotch Court had jurisdiction to dissolve a marriage which had been celebrated in England between a domiciled Scotchman and an Englishwoman.

In the case of *Geils v. Geils* (11) Lord St. Leonards takes the point which I have already indicated to be the turning point in this case, for when dealing with the case of a domiciled Scotchman marrying an Englishwoman in England (which is the case here), he says, "The marriage is both an English and a Scotch marriage," to which the reporter has added the scarcely necessary note ("English in point of celebration and Scotch in point of substance"). It appears from another report of this case (20 *Law Times* 145), that the proceeding in the Scotch Court was for a cause for which the marriage could not have been dissolved in England, for it was by a wife for adultery alone—adultery only was alleged in the pleadings, though in some proceedings in England she had accused him of cruelty also.

In *Conway v. Beasley* (12) this subject was brought before Dr. Lushington, than whom no one was more competent to form and express an opinion upon it. The decision there was that where a domiciled Englishman marries an Englishwoman in England, if a decree of

(12) 3 *Hag.* 630.

divorce be pronounced by a Scotch Court while the domicile of the parties remains English, it will not be recognised in an English Court as a dissolution of the marriage. This was in accordance with *Lolley's Case* (1) as I understand it. But Dr. Lushington expressly refused to treat *Lolley's Case* (1) as an authority for the proposition which has been contended for on behalf of the petitioner. He says (p. 643), "Cases have been cited in which it is alleged that a final decision has been pronounced by a very high authority upon the operation of a Scotch divorce on an English marriage—that it has been determined that a marriage celebrated in England cannot be dissolved by the sentence of a Scotch tribunal,—that the contract remains for ever indissoluble. The authorities principally relied on for establishing that position are the decision of the twelve Judges in *Lolley's Case* (1), and the decision of the present Lord Chancellor on a very recent occasion. If these authorities sustained to its full extent the doctrine contended for, the Court would feel implicitly bound to adopt it; but I must consider whether in *Lolley's Case* (1) it was the intention of these very learned persons to decide a principle of universal operation absolutely and without reference to circumstances, or whether they must not almost of necessity be presumed to have confined themselves to the particular circumstances that were then under their consideration." He concludes (p. 653)—"My judgment, however, must not be construed to go one step beyond the present case, nor in any manner to touch the case of a divorce *a vinculo* pronounced in Scotland between parties who, though married when domiciled in England, were at the time of such divorce *bona fide* domiciled in Scotland, still less between parties who were only on a casual visit in England at the time of their marriage, but were both then and at the time of the divorce *bona fide* domiciled in Scotland."

In *Maghee v. McAllister* (13), the question in this case came before the Irish Lord Chancellor Blackburne. The only difference in the facts was that the wife

(13) 3 *Ir. Chanc. App.* 504.

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was an Irishwoman married to a domiciled Scotchman in England, but in my judgment the original domicile of the wife is irrelevant upon the ground I have already mentioned, that when a woman marries a man she, not by fiction but in fact, acquires the domicile of her husband. *Maghee v. M'Allister* (13) is therefore a direct decision on the question now before the Court. The Lord Chancellor, after considering all these cases, *Lolley's Case* (1) amongst the rest, says (p. 607)—“The case of *Munro v. Munro* (14) establishes that a marriage between a Scotchman and an Englishwoman, though celebrated out of Scotland, is a Scotch marriage, so as to have the effect of legitimising children born before the marriage according to the rule of the Scotch law. The opinions of Lord Brougham and Lord Lyndhurst in *Warrender v. Warrender* (9), of Lord St. Leonards in *Geils v. Geils* (11), of Dr. Lushington and Mr. Justice Storey, appear to be, that a marriage such as this is a Scotch marriage,” and in giving his final judgment he says (p. 609)—“The first marriage was celebrated in England between an Irishwoman and a Scotchman. He had not changed his domicile at the time of his marriage. He returned to Scotland with his wife, and she became a domiciled Scotchwoman and amenable to the jurisdiction of the Scotch Court. The case of *Warrender v. Warrender* (9) is expressly in point, and acting on that case and on *Munro v. Munro* (14), I am bound to hold the marriage to have been a Scotch marriage notwithstanding *Lolley's Case* (1). It was held in that case that a marriage celebrated in England, the parties being both English, could not be dissolved by the Scotch Courts. The parties in that case were not domiciled in Scotland, and had gone there merely for the purpose of getting rid of the marriage. For the reasons I have given, and on the authorities I have referred to, I am of opinion that the resolution in *Lolley's Case* (1) is only applicable where the facts are similar, namely, where the parties both at the time of the marriage and of the divorce are domiciled English, and that it does not apply to a case where the parties are domiciled Scotch, or where

(14) 7 Cl. & F. 842.

the husband is a domiciled Scotchman, and during the continuance of that domicile his marriage is dissolved by the competent Court of Jurisdiction in Scotland.” My judgment is that that is a good divorce everywhere, since it actually changes the *status* of the man, and enables him, wherever he may afterwards go, to enter into any other country in the condition of an unmarried man, and so free to contract another marriage. For these reasons my judgment must be in favour of the respondent.

Solicitors—S. A. Tucker, for petitioner; J. S. Ward, for respondent.

DIVORCE.  
1880.  
April 30.  
May 11.

BRIGGS v. BRIGGS.

*English Marriage—American Divorce on the Ground of the Wife's Desertion—Husband's Domicile English at date of Suit—Lolley's Case.*

*Petitioner and respondent, who were both domiciled English subjects, were married in England in 1862. In 1868 the respondent (the husband) went to America, leaving the petitioner in England, and took up his residence in the state of Kansas. In June, 1873, he procured a divorce from his wife on the ground of her desertion, and in September in the same year he went through a ceremony of marriage in Kansas with E. H., with whom he afterwards cohabited. He had not at the time of the institution of his suit for divorce acquired a domicile in the state of Kansas:—*

*Held, that the case fell within the principle of Lolley's Case, and that the decree of the Court of Kansas was not binding on the tribunals of this country.*

*On the petition of the wife, a decree nisi for dissolution of her marriage with the respondent was pronounced, on the ground of his adultery coupled with bigamy.*

This was a petition by a wife for dissolution of marriage by reason of the husband's adultery, coupled with bigamy

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and desertion. The respondent did not appear. The case was heard before the President, without a jury, on the 30th of April, and the material facts as proved are stated in the judgment.

*Searle*, for the petitioner.

*Our. adv. vult.*

THE PRESIDENT (SIR JAMES HANNEN) (on May 11) delivered the following judgment:—The petitioner, Sarah Priscilla Briggs, seeks the dissolution of her marriage with the respondent on the ground of his desertion, bigamy and adultery. The marriage was performed at Birmingham in 1862. Both the parties were domiciled English subjects. In 1868 the respondent, being in difficulties, left the country to avoid his creditors, and went to the United States. After attempting to establish himself in business at Cleveland, Ohio, he, as he himself says, at the sight of one of his creditors, fled 2,000 miles further west, and took up his residence in the State of Kansas, and there, on the 9th of June, 1873, procured a divorce from his wife on the ground of her desertion. On the 25th of September in the same year he went through a ceremony of marriage with Emma Helsby, with whom he has ever since cohabited. It is not essential for the petitioner's purposes to establish the charge of desertion, as either the Kansas divorce is valid, in which case her marriage is already dissolved, or it is invalid, and she is entitled to succeed in this suit on the ground of her husband's bigamy and adultery. In this state of things a decree of this Court, whatever way it may be, will satisfy the object she has in view, by defining her position with regard to her husband and enabling her, if so disposed, to contract a fresh marriage. It is only of importance on public grounds that the judgment of the Court should be based on principles which may be safely applied to future cases.

The first question which has to be considered is, whether or not the respondent at the time of the institution of his suit for divorce had acquired a domicile in the State of Kansas. This is undoubtedly a

question of difficulty, on which opinions may differ. In the first place, it is clear that the respondent did not voluntarily seek a new home. He left this country through fear of his creditors. The letters to his wife which have been produced shewed that he had not, down to the summer before he commenced proceedings for divorce, abandoned the idea of returning here if, as he hoped, he could pay his debts. Writing in June, 1872, he says, "How dare I return to England unless I could pay my creditors?" and he adds that if he had a sum of money he had left with his wife, and which he requests her to bring to him, he "could soon be a rich man, and could return to England and live out his and her declining years in peace and plenty." In a later letter he says his real design was to have returned, feeling certain he could make money in America. "If I had not had a long head and strong mind my heart would have broken, as I should have gone mad at the prospect, as I now see it, of being probably compelled to end my days here." In another letter he says, "I am building up all my hopes on being able to return to England in four or five years, and cannot do so except by practising the most strict economy." Other statements to the same effect occur in his letter. These passages seem strongly to indicate an *animus revertendi*. The *onus* of proving an intention to abandon the domicile of origin lies on those who assert it. In the present case, though the respondent has not entered an appearance to the petition, he has given evidence under a commission issued at the instance of his wife, and he does not allege that he had acquired a Kansas domicile. He merely swears that he had been resident in Kansas twelve months before March, 1873, when he filed his petition for divorce; and it appears from the proceedings and from the evidence of an expert that this is all that is required by the law of Kansas to give the Courts of that State jurisdiction. It is, of course, possible that after writing the letters I have quoted, and before March, 1873, he had formed the fixed intention of remaining in Kansas, but as I have said, it lies upon him to prove this, and he has not

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attempted to do so. In those circumstances it appears to me that it is not established that at the time of commencing proceedings for divorce he had freed himself from the restrictions of the English law by abandoning his English domicile and acquiring a domicile in Kansas. If this be a correct view of the facts, the law applicable to the subject is abundantly clear. This was an English marriage within the meaning of *Lolley's Case* (1), and it is governed by a resolution of the Judges that "no sentence or act of any foreign country or state can dissolve an English marriage *a vinculo matrimonii* for ground on which it was not liable to be dissolved *a vinculo matrimonii* in England." Here the marriage was dissolved on the sole ground of the desertion of the wife, for which it could not have been dissolved in England. It follows that in the Courts of this country, whatever may be the case in Kansas, it must be regarded as a subsisting marriage, and the connection which has since been formed by the respondent by marriage with another woman must be treated here as bigamous and adulterous.

This view of the facts renders it unnecessary for me to determine whether I ought to act upon the doubt expressed by Lord Westbury (Chancellor) in *Pitt v. Pitt* (2), "whether the domicile of the husband is to be regarded in law as the domicile of the wife, either by construction or abstraction, so as to compel the wife to become subject to the jurisdiction of the tribunals of any country in which the husband may choose to acquire a domicile"—a doubt, however, which Lord Kingsdown stated he did not share. I am also relieved from the necessity of considering the effect of the wife, as she alleges, not having received notice of the proceedings in the Kansas Court, the loose practice of that Court having been satisfied by the oath of the husband that he had posted to his wife in England a notice of his petition and by publication of the notice in a Kansas newspaper during three weeks. This practice of the Kansas Court certainly illustrates in a remarkable manner the

injustice which Lord Westbury points out may be done to a wife by allowing a husband to choose his own *forum*. Lord Kingsdown's opinion, on the other hand, seems in accordance with the conclusions of foreign, and especially American jurists on this subject. For the reasons I have stated I pronounce a decree *nisi*, on the ground of bigamy coupled with adultery, and condemn the respondent in costs.

Solicitors—Letts Brothers, for petitioner.

## [IN THE COURT OF APPEAL.]

1880. }  
Feb. 18, 25. } THE ALINA.\*

*County Court—Charter-Party—Action in rem—Jurisdiction—The County Court Admiralty Jurisdiction Act, 1868 (31 & 32 Vict. c. 71), s. 2—The County Courts Admiralty Jurisdiction Amendment Act, 1869 (32 & 33 Vict. c. 51), ss. 1 and 2.*

*The County Courts have jurisdiction under the County Courts Admiralty Jurisdiction Amendment Act, 1869, in actions in rem for breach of a charter party, provided the damages claimed do not exceed 300l., although the Admiralty Court has no original jurisdiction in such matters.*

*Gaudet v. Brown; The Cargo ex Argos (42 Law J. Rep. Adm. 1; Law Rep. 5 P.C. 134) followed.*

*Simpson v. Blues (41 Law J. Rep. C.P. 121; Law Rep. 7 C.P. 290); and Gunnessed v. Price (44 Law J. Rep. Exch. 44; Law Rep. 10 Exch. 65) overruled.*

In this case Brown & Son brought an action in the Norfolk County Court against the owners of the ship *Alina* for breach of a charter party, under which the ship was to have proceeded to Cronstadt, and there to have loaded a cargo of timber for a port in England.

Upon an application by the defendants

\* *Coram* Jessel, M.R.; James, L.J.; and Cotton L.J.

(1) Russ. & M. C. Cas. 237.

(2) 4 Macq. 640.

*The Alina, Adm.*

to Denman, J., in chambers, a writ was issued prohibiting the County Court Judge from further proceeding in the action, on the ground that the County Court had no jurisdiction in actions *in rem* for breach of a charter-party.

This decision was affirmed by the Divisional Court, consisting of Kelly, C.B., and Stephen, J.

The plaintiffs again appealed.

*Cohen and Aspinall*, for the appellants, relied on *Gaudet v. Brown* (1), in which the Privy Council, dissenting from the decision of the Common Pleas in *Simpson v. Blues* (2), held that the County Court had jurisdiction in respect of a claim for breach of a charter-party.

*Herschell and Wood Hill*, for the respondents, relied on *Simpson v. Blues* (2), and *Gunnstedt v. Price* (3); in which latter case the Court of Exchequer declined to follow the decision of the Privy Council in *Gaudet v. Brown* (1); but followed *Simpson v. Blues* (2).

The following authorities were also cited—24 Vict. c. 10. ss. 5, 6; *The Volunteer* (4); *Abbott on Shipping*, p. 16; *Kent's Commentaries*, vol. iii. p. 218; *Parson's Law of Shipping*, p. 174; *The St. Cloud* (5).

**THE MASTER OF THE ROLLS.**—The question which we have to decide cannot be treated as an easy one, inasmuch as it has given rise to such a conflict of decisions; but, applying the well-established rule of construction, I must say, speaking for myself alone, it does not appear to me to be so very difficult a question. The rule of construction, as laid down in all the cases, and notably in the House of Lords, is this, that where you have plain terms used in the enacting part of an Act of Parliament nothing less than manifest absurdity will enable a Court to say that the ordinary and natural

meaning of the terms is not the true meaning. Where there are two or more readings possible, that is, where there is ambiguity, there, of course, you let in arguments of more or less strength—arguments of inconvenience—arguments of the more useful or more likely interpretation. Therefore it appears to me that we must first determine whether the words are in themselves unambiguous; and then if we arrive at that conclusion, whether there is any such manifest absurdity as will enable a Court of construction to say that the natural meaning of the words could not possibly be the meaning intended by the Legislature to be put upon them.

Now, first of all, as to the words themselves. The Act is to amend the County Courts Admiralty Jurisdiction Act, 1868, and to give jurisdiction in certain maritime causes. If you judge by the title it certainly extends to giving jurisdiction in certain maritime causes. Then the second section is, "Any County Court appointed or to be appointed to have Admiralty jurisdiction shall have jurisdiction, and all powers and authorities relating thereto, to try and determine the following causes. As to any claim arising out of any agreement made in relation to the use or hire of any ship or in relation to the carriage of goods in any ship, and also as to any claim in tort in respect of goods carried in any ship, provided the amount claimed does not exceed 300*l*." I am at a loss to see any ambiguity in those words. "Any agreement in relation to the use or hire of a ship" must include a charter-party. It would be difficult to define a charter-party otherwise than as coming within those terms. In fact, it is very often so defined. I see no doubt or difficulty, so far as I am concerned, in reading the words in their proper sense, and they do appear to me to be quite clear. I am very glad on this point, at all events, to see that, with one exception, the judgments of all the Judges who have given an opinion or decision upon this section are unanimous, although the exception is one of great weight and importance. In the case of *Simpson v. Blues* (2), where there were four Judges, namely, Justices

(1) 42 Law J. Rep. Adm. 1; Law Rep. 5 P.C. 134.

(2) 41 Law J. Rep. C.P. 121; Law Rep. 7 C.P. 290.

(3) 44 Law J. Rep. Exch. 44; Law Rep. 10 Exch. 65.

(4) 1 Sumner 551.

(5) Bro. & Lush. 4.

*The Alina, Adm.*

Willes, Byles, Brett and Grove, no one alleged, although something of that kind had fallen from Willes, J., on a previous occasion, that the words were anything but clear in themselves, and the ground of the decision was totally different. In the case of *The Cargo ex Argos* (1) again we have four Judges present, being the four ordinary Judges of the Privy Council, and all four agreed that the words were clear. Then when the point came again before the Court of Exchequer there were only two Judges present, Baron Cleasby and Baron Bramwell (6). Baron Cleasby does not state the words to be otherwise than clear in themselves, but I admit that Bramwell, B., does; and he states that he considers them ambiguous. Now, therefore, we have only one Judge who considers them ambiguous. Whether or not they are ambiguous is a question, of course, not to be lightly passed over with the judgment of Bramwell, B., the other way; and therefore I wish to say a word or two on the grounds which induced him to think them ambiguous. He says this: "The words are 'claim arising out of any agreement in reference to the use or hire of any ship,' not 'a claim arising out of any agreement for the use or hire of any ship.' I cannot think that the enactment is in plain and intelligible language, free from ambiguity. If I find the words without anything to control them or guide me in their interpretation, I should say they included the cases before us and much more. But as it is, I declare I do not know what they mean or were intended to mean. A charter-party is not an agreement for the use or hire of a ship, but it is said to be included in claims 'arising out of any agreement made with reference to the use or hire of a ship.' Would that include a shipbroker's claim for finding a charter?" Then he says: "Take the next words, does that include a claim on a policy of insurance? Some restriction must be put upon the words." Now, it appears to me, first of all, that there is some slip about the charter-party, and next, that the ambiguity which the learned Baron is

(6) Kelly, C.B., and Amphlett, B., concurred in the judgment delivered by Cleasby, B.

there speaking of is one of his own creating. He does not doubt for a moment that a charter-party would be included under the terms, what he doubts is, whether something else which is not before him would be included under the terms. Therefore, he says, there was an ambiguity as regarded the case then to be decided. But the supposed ambiguity relates to something totally different—a shipbroker's claim for finding a charter or a claim on a policy of insurance. It will be time enough, therefore, to consider whether or not those things are included in the words when the case arises. But when you come to examine really Baron Bramwell's opinion he does not dispute that the words will include a charter-party. So that one may consider that substantially all the Judges are agreed that the words are clear.

Well now, if the words are clear, are there other words in the Act of Parliament to shew that they have a different meaning? That is not suggested; but what is suggested is that by reason of the third section great inconvenience will follow, great alteration of the law will be made, and those inconveniences are such as will induce the Court to control the plain meaning of the words. Now, unless those inconveniences amount to manifest absurdity, it appears to me the law does not allow any such control to be exercised over the plain words of an enactment by a Court of construction, and consequently that the judgments given by the Court of Common Pleas and, with one exception again, the judgments given by the Court of Exchequer, could not be supported in point of law, because all that was relied upon was inconvenience. But I again admit that there is the exception in the case of Bramwell, B. He does put it on what appears to me a true legal ground—manifest absurdity. It only remains for me to consider whether there is any such manifest absurdity. Now that I am not misinterpreting the statements given in the judgments in the Common Pleas is plain, I think, from a very few words of the judgments themselves. I nowhere find in the elaborate judgment of Mr. Justice Brett anything like absurdity or words equivalent to it in any

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shape. What he says at page 296 is this: "These considerations lead, we think, to the conclusion that we ought not to construe the words of these County Court Acts as to create this large, novel and inconvenient jurisdiction, when we find from the context that the general intention was only to distribute the Admiralty jurisdiction by allowing suits of limited amount to be instituted in inferior Courts." And when we look in detail into his reasons they are these. First, he says, "The Admiralty Court is the Court of Appeal, and it has no jurisdiction to entertain these causes in the first instance." Now to my mind that is not a good reason, either on the ground of inconvenience or otherwise. It has frequently happened that the Court of Appeal has no original jurisdiction, and it has not unfrequently happened that even when the Court of Appeal has an original jurisdiction of its own it has no jurisdiction in respect of the matters as to which the appeal is given, nor is there in that respect any argument from inconvenience, because the Court of Appeal may be a very good Court of Appeal, and not a good Court of original jurisdiction. Then the next ground is this, that there is a power of transfer in different cases from the County Court to the Admiralty Court. Well, I will assume for this purpose that the power of transfer applies to these particular cases. Then it is said that the result will be to give to the then Admiralty Court at its will and pleasure a new jurisdiction, which it did not possess at the time the Act passed. Well, I am not very much impressed by that argument. In the first place, it is not to be presumed that the Admiralty Court will transfer causes except in the cases in which the Legislature intended the cases to be transferred—cases of such peculiar difficulty that they ought to be tried in the first instance by the Admiralty Court, and therefore there will be no arrogation of jurisdiction except where it was conferred by the Legislature. Then it is said, why confer that jurisdiction on the Admiralty Court? I do not know that there is any objection to it. At this time the Admiralty Court took evidence, and conducted its proceedings very much in

the same way as the Common Law Courts. There might be some trifling differences, but substantially justice was administered very much in the same way. What inconvenience would arise by giving this jurisdiction to the Admiralty Court? The only suggestion we have heard is that the plaintiff might not get a jury or the defendant might not. But the answer was very simple. It does not follow that was considered an evil by the Legislature. We know perfectly well that by the comparatively recent Judicature Act that very option is given to a plaintiff of going to a division where there is no jury instead of to a division where there is a jury. Therefore I cannot see that there is any strong argument to be adduced from the Legislature having enacted that partially only which it has since enacted to a very great extent.

Well, those are two objections. The third objection is this, that looking at the 3rd section of the Act the jurisdiction is conferred on the County Court to proceed *in rem*, thereby enabling the County Court to arrest a ship in cases where before the passing of the Act the ship could not be arrested. Well, there again, I am at a loss to see the inconvenience. It might have been considered by the Legislature to be of very great importance that in these cases you should have the power to arrest a ship. Inconsistency there is, and that is really a part of the argument. It is inconsistent that the County Court can arrest the ship where the claim is for the smaller amount and the Admiralty Court or the Common Law Court cannot arrest the ship where the claim is for the larger amount. Yet, although it is in one sense an inconsistency, in another sense it is not. It may be the view of the Legislature that additional remedies are to be given in cases of claims for small amounts or of a peculiar character relating to ships which are not given in cases of larger amounts or of an ordinary character not relating to ships. The remedy to the seamen for wages, for instance, is different from the remedy of domestic servants for their wages; and it does not at all follow that all that was not contemplated by the Legislature; and I am, again, at a loss to see the great incon-

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venience. Well, then, it was said that charterers and shipowners of smaller vessels would be at a disadvantage, because their ships would be liable to arrest. Of course one answer to that would be, that if the amounts claimed were small, the amount of bail would be small, and the inconvenience, therefore, as far as they are concerned, would not be the subject of very grave consideration. I have gone through all these reasons because it does not appear to me that the case is made out even as to great inconvenience; but I am also of opinion that even if it were made out it would not be sufficient to enable us to control the plain words of the Act of Parliament. Now I need not further comment upon the judgment of Mr. Baron Cleasby in the second case at Common Law. He does not really take any new ground which has not been already considered. But Baron Bramwell does. He says: "Shortly, the objections are that on the construction contended for by the defendant the County Court has Admiralty jurisdiction in cases in which the Admiralty Court has no original jurisdiction." That I have dealt with. "That the High Court would have an appellate jurisdiction where it has not an original jurisdiction." That I have dealt with. "That there could be transferred to it from the County Court causes which it could not originally entertain, and so it could hear and decide cases not properly within its own jurisdiction or that of the County Court." That I have dealt with. To these objections are to be added, not as aiding the construction of the statute, but helping to the probable intention of the Legislature, the objections so forcibly stated in the judgment of the Common Pleas to the Admiralty procedure being applied to such cases as those in question. Therefore, according to Bramwell, B., those last objections are not sufficient, and in that I cordially concur. We have only got the remaining, therefore, and what does he say is the effect of those three? He says, "As to the limited construction"—that is, confining it to Admiralty causes—"with great respect it seems to me a meaning may be given to

the words without the admittedly preposterous consequences the defendant contends for;" and he says, further, "this construction gives a meaning to the words without the absurd consequences which would follow on the defendant's construction." Consequently, he alone comes to the conclusion that those three objections I have mentioned are so preposterous and so manifestly absurd, that it could not have been the intention of the Legislature. Now, with the greatest possible respect for Lord Justice Bramwell, and no one entertains a greater respect for him than I do, not only do these consequences not appear to me to be either absurd or preposterous, but I cannot see any objection to them at all. I cannot see any objection on the ground that the Appeal Court has no original jurisdiction over the same subject matter. I cannot see any objection that the County Court should have Admiralty jurisdiction; nor can I see any objection, which is the third and only one remaining, that the Court of Admiralty should transfer to itself especially difficult cases relating to maritime matters, though the Court itself had no original jurisdiction to deal with such a cause. That being my opinion, it appears to me there is no absurdity and nothing preposterous in these reasons to induce us to overrule or control the plain meaning of the Act of Parliament. I therefore arrive at the conclusion that the decision of the Privy Council is the correct decision, and consequently that we should allow this appeal.

JAMES, L.J.—It appears to me that everything that could be said upon this subject has been said in the judgments of the Courts of the Common Pleas and Exchequer and in the judgments of the Privy Council we have heard read, with the addition now made by the Master of the Rolls. All I can say is, that having considered everything, I do most entirely adopt the language of the judgments of the Privy Council, as, it seems to me, disposing of almost the whole of the case. The only thing that I shall say in addition is, that it does appear to me that if you

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construe this last Act, which is the Act before us, irrespective of the third section, merely considering it as a question of ordinary jurisdiction to be exercised by the County Court, there could not have been the shadow of a doubt as to the meaning of the first clause, that is to say, supposing there had not been the third section giving the power of proceeding *in rem* it would have been the merest matter of course to have held that the County Court had the ordinary jurisdiction of a County Court to deal with the claims in question in its ordinary jurisdiction. Well, if that was so, if that was the meaning of the Act of Parliament irrespective of that third section, is it inconsistent with the ordinary rules of construction of an Act of Parliament to say that a clause saying in so many words, "In all the cases aforesaid the Court shall have jurisdiction *in rem*," is to be held to take away the jurisdiction in cases which it had in the plainest terms given before? It is as if in order to remove all doubt the Legislature had said, "though you may think we could not have meant it, we do in so many words say that in every one of these cases the County Court shall have jurisdiction *in rem*." It is said that because they say in those cases the County Court shall have jurisdiction *in rem*, that is to cut down the cases in which jurisdiction is given. If it had been intended to have said merely that the County Court shall have the jurisdiction of the Court of Admiralty in those particular cases, it appears to me it would have said so in so many words. That is to say, the Act being an Act to amend a former Act, and to give jurisdiction in certain maritime causes the first section would have said the County Court shall have such jurisdiction as the Court of Admiralty possesses in the following matters, and then the whole thing would have been made quite clear. It seems to me that the Legislature intentionally did not do so but gave jurisdiction in certain matters, and then went on to give the particular remedy of the Court of Admiralty to all the cases in which it had given jurisdiction before. I only add these few words to what has

been said before, adding that I adopt as my judgment from the beginning to the end the judgment of the Privy Council.

COTTON, L.J.—If in this case there had not been such a difference between the different Judges and different Courts before whom this question has come, probably I should have contented myself by saying that in my opinion the judgment of the Privy Council exhausted the case and was the correct decision; but I think it not right so to leave the case, though I have but little to add. What we have to consider in this case as the primary question, and that really on which the whole question turns, is whether or not the first sub-section of the second section of the Act of 1869 does or does not clearly include actions which have been commenced in the County Court. Now the words seem simple enough: "that the County Court shall have power and authority to try and determine the following causes: As to any claim arising out of any agreement made in relation to the use or hire of any ship." We must consider whether or not there is any ambiguity in those words without reference to the questions as to what will be the consequence of holding that they do or do not include a particular cause of action. Now it has been said that a charter-party is not a contract for the use or hire of a ship. In some cases no doubt the person who enters into the charter-party becomes for the time being, as it were, the lessee of the ship, but it is quite sufficient to refer to the well recognised authority, *Abbott on Shipping*, for the purpose of shewing that those words do aptly refer to and include a charter-party. Because what he says is this. "A trading ship is employed by virtue of two distinct species of contract. First, the contract by which an entire ship, or at least the principal part thereof, is let for a determined voyage to one or more places. This is usually done by a written instrument called a charter-party." So that he does refer to it as a contract for the letting of a ship, and no one can for a moment say it is not a contract for the use of a ship, or where it

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does not apply to the whole of the ship, it is not a contract for the use of a part of a ship. That being so, here are words which as regards the particular section with which we have to deal have in themselves no ambiguity at all, and do aptly refer to an action arising on a claim on a charter-party. But then there is this to be considered. It is sought to restrict that by saying that this is to be any claim in which the Court of Admiralty has jurisdiction, and I asked Mr. Herschell whether or not he could point out any claim arising on a charter-party in which the Court of Admiralty had jurisdiction. He said, "No, except a matter which would be dealt with and come within the second part of this clause, 'or an agreement in relation to the carriage of goods in any ship.'" So that practically the argument comes to this, that we must disregard and give no effect whatever to the first words of this sub-section which does apply to contracts on charter-parties. No doubt it might be said that the Court of Admiralty has jurisdiction as regards goods carried under a charter-party, but then that is provided for by the second part of the clause, leaving nothing within the Admiralty jurisdiction as to which the first part of the clause did not apply. Are we to give no effect whatever to these words? Now so to do requires very strong reasons, and of course in seeing what the particular construction of any clause is, we must not look only to the clause itself. We are not only at liberty, but bound to look to all there is in the same written instrument to see whether that has given an interpretation to the words. But here there is nothing of the sort. It is only attempted to control those words which, in my opinion, and that of the large majority of the Judges before whom the question has come, are clear as regards the question which we have before us. Now how is that attempted to be done? I will not go through in detail all the matters which have been referred to by the Master of the Rolls. I will refer to two only which have been mentioned. It has been said that this comes within the grip of an Act which transfers to the County Courts Admiralty jurisdiction, and there-

fore we ought to restrict the power given by this section to powers which the Court of Admiralty has. Now one must really consider here how this power is given. It is given not in the original Act, and although the amending Act is to be read as part of the original Act, yet it is in fact a subsequent additional power given to the County Court. One gets rid of a great deal of the argument adduced against this appeal by considering this, that Parliament had given by the first Act some part of the Admiralty jurisdiction to the County Court, and then by the subsequent Act it does not say in terms that it gives such jurisdiction in this matter as the Court of Admiralty had; but, having given to the County Court certain Admiralty jurisdiction with power to transfer cases to the Court of Admiralty, and with power to appeal to the Court of Admiralty, it thinks fit to give the County Court this additional power, still leaving the power of appeal to the Court of Admiralty, though that Court had no original jurisdiction in the matter, and still leaving the power of transfer. Then the only other matter which I need mention is this, and probably it is the most important, that according to our decision there will be a lien practically on the ship in respect of a certain claim of a limited amount when there is no such right in respect of similar claims of a greater amount. But the answer is that Parliament has thought fit to pass an Act which, according to the true construction of that Act, does give that right; and that being so, how can this Court, a mere Court of construction, cut down the clear enactment of the Act because Parliament has done something or the Act has done something which possibly Parliament did not think of, and which may be thought inconsistent with the law not being altered as regards claims of larger amount. In my opinion no such considerations ought to induce us to say that effect is not to be given to the clear enactment of an Act of Parliament. If that effect is wrong, Parliament who passed the Act must alter it.

JAMES, L.J.—It may not be inconvenient to add this with regard to one

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point. A great deal has been said about the power of transferring to the Court of Admiralty; but when the Court of Admiralty sits as an appeal Court its decision is final, but where the matter is transferred to it, it is transferred subject to an appeal to the High Court.

Solicitors—H. C. Coote, agent for C. Diver, Yarmouth, for appellants; Thos. Cooper & Co., for respondents.

ADMIRALTY.  
1879.  
Nov. 22, 25.

THE MATHEW CAY.

*Practice—Costs—Compulsory Pilotage.*

*When in an action for damages by collision the defendant pleads a defence on the merits and also a plea of compulsory pilotage, and succeeds on the plea of compulsory pilotage only, each party will have to pay his own costs.*

*Semble, the defendant will be entitled to the costs of the action if there is only a plea of compulsory pilotage and he succeeds upon it.*

This was an action for damages, brought by the owners of the paddle steamer, *Wye*, against the *Mathew Cay*. The defendants by their statement of defence pleaded, first, that the *Mathew Cay* was not liable for the damage caused by the collision in question, as it was caused by the negligent navigation of the *Wye*, and second, by the 9th paragraph of the statement of defence, they averred that, "if and so far as the said collision was occasioned by any improper and negligent navigation of the *Mathew Cay*, it was solely occasioned by some fault or incapacity of the said pilot of the *Mathew Cay* who was a qualified pilot, acting in charge of the *Mathew Cay*, within a district where the employment of such pilot was compulsory by law, and whose orders were obeyed by the master and crew of the *Mathew Cay*."

*Bompas and Myburgh* were for the owners of the *Wye*.

*Milward and Olarkson*, for the owners of the *Mathew Cay*.

At the hearing the defendants proved the facts relied on in paragraph 9 of the statement of defence, and the Judge after hearing the evidence as to the general facts, delivered judgment to the effect that the collision was occasioned by the improper navigation of the *Mathew Cay*, but that the defendants were not liable, having made out their defence under the 9th paragraph.

*Milward* applied for costs on the ground that if the action had been brought in a Common Law Division, the defendants would have been entitled to their costs, and that the Court of Appeal by their decision in *The Swansea* and *The Oondor* (1), had decided that the same rule was to apply to all Divisions of the High Court.

*Bompas* argued that the ruling in *The Swansea* and *Oondor* (1) did not apply to the present case, and relied on the case of *The Dairoz* (2).

*Cur. adv. vult.*

SIR R. J. PHILLIMORE (on Nov. 25).—This is a case in which the defendants pleaded by way of defence both the merits and compulsory pilotage. The Court was of opinion that the plaintiffs were right on the question of the merits, and the defendants on the question of compulsory pilotage, and the matter stood over for the consideration of the Court, as to what order it would make with respect to costs. Now the recent decisions of the Court of Appeal have not left the question of costs in a very satisfactory state. The decision of that Court in the case of *The Dairoz* (2) was in 1877, and the Master of the Rolls in giving the judgment of the Court in that case said that—"the rule acted on in the Admiralty Court in cases like the present was, that when the owners of a vessel were relieved from liability on the ground of compulsory pilotage, no costs were given on either side, and the same rule ought to apply in the Court of Appeal. There

(1) 48 Law J. Rep. P., D. & A. (App.) 33; Law Rep. 4 P.D. 120.

(2) 37 Law Times, N.S. 137; *Roscoe's Admiralty Practice*, 211; See the Admiralty and Common Law Cases, on this point collected, ib. pp. 211, 214.

*The Mathew Cay, Adm.*

will, therefore, be no costs either in the Court below or in the Court of Appeal." That was in a case where compulsory pilotage was pleaded. Then there is another and later case which turned on the question of inevitable accident. I refer to the case of *The Condor and The Swansea* (1) in 1878. In that case Lord Justice James is reported to have said that—"It required great consideration whether it could be right that there should be one rule as to costs in one branch of the High Court of Justice and another in another," and he said afterwards, "I think, however, it may be considered as settled that there will be no difference in future in the rule as to costs." That was with regard to the question of costs in cases of inevitable accident. It appears to me that I must follow the rule laid down in the case of *The Dairoz* (2), and I think it would be found upon enquiry to work a great injustice if that rule were to be changed. I say nothing about the rule in cases of inevitable accident, but where compulsory pilotage is pleaded by way of defence together with a defence as to the merits of the collision, I do not see how the owner of a vessel which suffers wrong is to know when the action is brought either that there is a pilot on board or that he is duly licensed, or that the crew did or did not obey his orders or did or did not contribute by their negligence to the collision. There are many circumstances which seem to take the practice with regard to costs as applied to cases where compulsory pilotage is pleaded out of any rule which, according to the decision in the case of *The Swansea and The Condor* (1) might be laid down in case of inevitable accident. Until better instructed I shall, in cases where the defence of compulsory pilotage is pleaded as well as a defence on the merits, adhere to the ruling laid down in the case of *The Dairoz* (2), and therefore I shall dismiss this case without costs on either side.

Solicitors—F. S. Gosling, agent for Luard & Shirley, Cardiff, for plaintiffs; Ingledew & Ince, agents for Ingledew, Ince & Vachell, Cardiff, for defendants.

ADMIRALTY. }

1880.

April 14. }

THE RADNORSHIRE.

*Practice—Interrogatories—Collision Actions.*

*Interrogatories may be delivered in an action for damage by collision asking for information relative to the collision.*

*The Biola overruled.*

This was a motion by the plaintiffs in an action for damage by collision, to set aside interrogatories addressed to them by the defendants. The action was an ordinary collision action between *The Radnorshire* and *The Paria*, of which the plaintiffs were the owners.

*Clarkson*, in support of the motion.—It has never been the practice to administer interrogatories in collision actions. The preliminary Acts prevent the necessity for interrogatories. The point is also concluded by authority—*The Biola* (1).

They are unreasonable, and so Order XXXI. rule 5, applies.

*Milward and Hilberry, contra.*—Unless interrogatories are objectionable in some way the parties have a right to deliver them, and there can be no difference in the procedure in regard to discovery in the different divisions of the High Court.

SIR R. J. PHILLIMORE.—I feel no doubt that I must dismiss this motion. I confess that I think it will increase the cost of proceedings, and unnecessarily, if the practice is to spring up of administering interrogatories in every collision suit, but, nevertheless, in spite of the case of *The Biola* (1), which has been referred to in the argument, I cannot think that, as the rules stand, these interrogatories, as a whole, have been improperly exhibited. Any objections to the several questions must be taken in the answers. I therefore dismiss the motion. The costs to be costs in the cause.

Solicitors—T. Cooper & Co., for plaintiffs; F. W. & H. Hilberry, for defendants.

(1) 34 Law Times, N.S. 135; 5 Asp. Mar. Cas. 125.

## DIVORCE.

1880.

March 6.

April 6.

BAKER v. BAKER, WHEELER  
AND OWEN.

*Suit for Dissolution—Petitioner a Lunatic—Suit instituted by Committee of his Estate.*

*The insanity of the husband or wife is not a bar to a suit on his or her behalf for dissolution of marriage, and such a suit may be instituted by the committee of the estate of the lunatic.*

In this case John Alfred Baker, of the city of Bristol, steam sawmill proprietor, the committee of the estate of William Baker, a person of unsound mind, so found by inquisition, and as guardian of the said William Baker, presented on his behalf a petition for dissolution of marriage by reason of his wife's adultery. The petition alleged the marriage of William Baker with Gertrude Blanche Baker, the respondent; their cohabitation; that there had been no issue of the said marriage; that the respondent had committed adultery; that the petition was presented by the leave and under the direction of the Right Honourable the Lords Justices; and the petitioner prayed for a dissolution of the marriage, and for further and other relief.

The respondent in her answer denied the adultery, and also demurred to the petition as bad in substance, on the ground that the petition did not allege that the petitioner was permanently insane, nor that there was no present prospect of his recovering within a reasonable time; that it was not competent to the petitioner during his lunacy to present a petition to this Court for a dissolution of his marriage; and that the Court could not proceed to hear and determine the matters alleged, or to pronounce a decree of dissolution of marriage thereon.

*Inderwick* (with him *Bayford*) (on March 6), in support of the demurrer.—*Mordaunt v. Moncrieffe* (1) does not apply, that being the case of a lunatic

respondent. In *Woodgate v. Taylor* (2), as appears by the note to the case reported in 30 Law J. Rep. P. & M. 196, the Lords Justices were of opinion that it was not proper for the committee of a lunatic to petition for the dissolution of the marriage, but that the proper remedy was a judicial separation. Neither does *Bawden v. Bawden* (3) apply; it was a case for judicial separation. In such cases no affidavit is necessary from the petitioner, but the 41st section of the first Divorce Act imperatively requires it in suits for dissolution of marriage. It is a question for the husband alone to say whether he feels the wrong the wife has done him, and a man does not necessarily wish for a dissolution of his marriage because his wife has committed adultery. Unless there is something in the Act, and there is not, which shews that the Legislature intended to give the power to another person to sue on his behalf, the Court ought not to proceed to give a remedy which is irrevocable. Besides, the committee of the person and not of the estate is the proper person to sue.

*Deane* (with him *Searle*), in support of the petition.—The Act makes no difference between a petitioner and respondent, and the same principles are applicable to a suit either for dissolution of marriage or judicial separation. If the petitioner can ask for any he can ask for all the relief which the Court can give. In *Parnell v. Parnell* (4) and *Portsmouth v. Portsmouth* (5), the marriage was annulled in a suit on behalf of a lunatic. In many cases, as, e.g., where there are settlements, a judicial separation would be a very inadequate remedy for a wife's adultery. In *Wells v. Cottam* (6) the marriage was set aside against both husband and wife.

*Inderwick*, in reply.

*Our. adv. vult.*

THE PRESIDENT (SIR JAMES HANNEN) (on April 6) delivered the following judgment.—The first named petitioner in this

(2) 2 Sw. & Tr. 512.

(3) 2 Sw. & Tr. 417; 31 Law J. Rep. P. & M. 94.

(4) 2 Hag. Cons. 169; 2 Phill. 168.

(5) 1 Hag. Ec. 355.

(6) 3 Sw. & Tr. 364.

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(1) 43 Law J. Rep. (H.L.) P. & M. 49; Law Rep. 2 Sc. & Div. App. Cas. 374.

VOL. 49.—P., D. & A.

*Baker v. Baker, Div.*

case is the committee of the estate of William Baker, a lunatic, and he prays that the marriage of the lunatic may be dissolved on the ground of his wife's adultery. The petitioner alleges that it is presented by the leave and under the directions of the Lords Justices, and that the said William Baker is a person of unsound mind, so found by inquisition, and that there is no present prospect of his recovery. The respondent has denied the adultery and has also demurred to the petition on the grounds that it does not allege that the petitioner (by which is meant the said William Baker) is permanently insane, nor that there is no prospect of his recovery within a reasonable time, and further that it is not competent for the petitioner during his lunacy (by which is meant the committee during the lunacy of the said William Baker) to present a petition for dissolution of his marriage, and that the Court cannot proceed to hear and determine the matters alleged in the petition or to pronounce a decree of dissolution thereon, and, lastly, that the action being for personal relief ought not to be brought by the committee of the estate.

The broad question raised upon this demurrer is whether it is competent for any one to institute on behalf of a husband who is incapacitated by insanity from giving his assent to it a suit for dissolution of the lunatic's marriage. This most important question was touched upon, though not decided, in the case of *Mordaunt v. Moncrieffe* (1), before the House of Lords. It now becomes necessary to determine whether or not there is a distinction between the case of a lunatic being made a respondent in a suit for dissolution of marriage and that of the committee of a lunatic bringing such a suit on the lunatic's behalf—whether or not, to the proposition that a lunatic may be sued in such an action, it is a corollary that a lunatic may sue.

The learned Judges who took part in the case of *Mordaunt v. Moncrieffe* (1) on its several stages, all agreed that the answer to the question there raised must be sought exclusively in the Act of Parliament by which the Divorce Court was established, and the same remark applies

with equal force to the point now under consideration. The conflicting views taken on the subject of the application of the statute to the case of a lunatic respondent may be thus summarised. Those who thought that proceedings could not be taken against an insane person argued thus: "The legislature has instituted a new tribunal and new proceedings for the determination of questions not hitherto cognizable by English law; the statute requires the parties or entitles and empowers them to do certain things, partly in the interest of the parties themselves, partly in the interest of the public, which can only be done, or effectually done, by sane persons, yet no provision is made in case of the respondent being insane. The inference to be drawn from this state of things is that the new procedure was not intended to apply to the case of a respondent being a lunatic, and that such a case must be left to be dealt with, as it must have been before the Act, by application to the House of Lords, which is still open to all persons for whom the Act does not afford a remedy." On the other hand, those who hold that the proceedings might be maintained against a lunatic respondent, argued thus: "True it is the legislature has instituted a new tribunal and new proceedings for the determination of questions not hitherto cognizable by English law, but this tribunal and these proceedings are not criminal but civil, and therefore, though no provision is made for the case of a lunatic respondent, by analogy to other civil proceedings a lunatic respondent is liable to be sued, and the fact that the insanity may preclude an effectual defence being set up, must be regarded as a misfortune resulting from the respondent's condition, and does not affect the petitioner's right to sue, any more than the death or insanity of a material witness for the defence."

The latter of these two contentions prevailed in the House of Lords, and I am, of course, bound, not only by the actual decision, but by the principles on which it proceeded, and if those principles embrace, not only the case of a lunatic respondent, but that of a lunatic petitioner, I must apply them in the present

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instance. It is remarkable that all those Judges who thought that proceedings could be maintained against a lunatic were also of opinion that they might be maintained on behalf of a lunatic; while, on the other hand, those who thought that the proceedings could not be maintained against an insane person were of opinion that the proceeding could not be taken on behalf of such a person.

In *Mordaunt v. Moncrieffe* (1) the Judges consulted were asked the specific question, whether proceedings for dissolution of a marriage could be instituted and maintained on behalf of a husband who, before the proceedings were instituted, had become incurably insane. Mr. Justice Brett says: "There are acts specifically required to be done by a petitioner which make the procedure more clearly in language inapplicable to the case of an insane petitioner." I shall for convenience adopt the expression "insane petitioner" used by the learned Judge, but it is to be observed that in this and analogous cases, the committee of the lunatic is the petitioner. Mr. Justice Keating says: "Looking to the words of the statute it is difficult to suppose the legislature ever contemplated a lunatic being a petitioner;" and after stating his opinion that suits before the Act for nullity or judicial separation could have no application to a proceeding for a dissolution of marriage, he concludes: "I answer your Lordship's question, therefore, by saying, that a lunatic cannot be a petitioner for a dissolution of his or her marriage." In the Court below the learned Judge had expressed his view more fully on this point, and I refer to his judgment for an explanation of the grounds of his opinion.

The language of Lord Penzance has a direct application to the present case, because he argues from what he conceives to be the impossibility of distinguishing the cases of a lunatic petitioner and a lunatic respondent, that the proceedings under the Act could not apply to the latter, while he admits that if those proceedings can be taken against a lunatic, they may also be taken on behalf of such a person. He says: "It is to be observed at the outset that there are no words

applicable to the case of lunacy either of the petitioner or the respondent. If suits were intended to be entertained by and against such persons, it would be reasonable to look for some provisions by which their friends and relatives might act for them and protect their interests. But there are none such, nor, indeed, any special provision or machinery for the conduct of such suits. If the statute applies to lunatics at all, it deals with them in all respects like other persons. Accordingly a lunatic petitioner must present a petition and accompany it by an affidavit sworn by himself as to the truth of its allegations. On this section 41 is express."

On the other hand the Lord Chief Baron says: "The alternative question propounded by your Lordships, whether a petition for a dissolution of a marriage can be preferred on behalf of a lunatic husband or wife, seems to me to involve many considerations essentially different from those which arise in the present case, but I think as a matter of law, a committee or guardian may lawfully sue by petition under the Act." And in this opinion, Mr. Justice Denman and Mr. Baron Pollock concurred, and it was intimated that Sir Samuel Martin, who had heard the arguments, but had since retired from the bench, also shared the opinion of the learned Judges.

Turning to the speeches of the learned Lords who took part in the decision of the case, I find that Lord Chelmsford abstained from expressing an opinion on the point now arising for my determination. He says: "The alternative question submitted to the Judges, whether proceedings for the dissolution of a marriage can be instituted on behalf of a lunatic husband or wife, is unnecessary to be determined, and as it involves considerations very different from those which apply to the case where the respondent is a lunatic, and as there may be conditions annexed by the Act to the presenting a petition for a divorce, with which a lunatic may be unable to comply, I should not like to express any opinion without hearing a further argument upon the question that was necessary upon the hearing of this appeal."

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Lord Hatherley, however, clearly indicates that his opinion is, that proceedings might be taken on behalf of a lunatic petitioner. He says: "Great stress has been laid in the Court below, as well as in some of the opinions delivered in your Lordships' House, on the supposed incompatibility of the enactments with the supposition of any principal respondent, or, indeed, any petitioner, being a lunatic, as a person incompatible from insanity of acting on his or her own behalf. The 41st section, for instance, is pointed out as regards the petitioner which requires him or her to verify the petition by affidavit. But be it observed that this section applies to petitions in suits for nullity, judicial separation or jactitation of marriage as much as to those for divorce *a vinculo*. Now suits for nullity, judicial separation and jactitation of marriage had long been cognizable in Ecclesiastical Courts, and suits for nullity, as in the *Portsmouth Case* (5), often proceeded on the insanity of him who applied for a decree. All these are now transferred to the new Court, and are directed by the 22nd section of the Act to be conducted as heretofore with regard to procedure, and this 41st section cannot be taken to have stayed such suits from proceeding from the simple fact of requiring an affidavit which, in the *Portsmouth Case* (5), for instance, could not have been made."

It appears from these quotations that the weight of opinion, though not amounting to judicial decision, largely preponderates in favour of these proceedings being maintainable. This being the state of the authorities upon the question, the duty of determining the question in the first instance now devolves upon me. No one can feel more strongly than I do the difficulty of administering the law of divorce where one of the parties is insane. One of the peculiarities of the law is that the public is deemed to be interested in the full disclosure of the relations of the litigants to one another, and of the conduct of the complaining party. This was so strongly felt, that as the first Act did not arm the Court with sufficient power to investigate the petitioners' antecedents, a public officer

was afterwards appointed, authorised to intervene in the proceedings. To allow the suit to proceed against an insane person is an abandonment of the most obvious and, in most cases, the only means of obtaining that information which the Legislature has considered the public welfare requires. With regard to the interests of a respondent, although the proceedings are not criminal, yet the same principles of justice and humanity which introduced into the criminal law the provision that no insane person can be called upon to answer a charge of having committed a crime when sane, seem equally applicable to proceedings against a respondent, and especially a woman, for dissolution of marriage on the ground of adultery. These arguments cannot be more forcibly expressed than they are in the judgment of the Lord Chief Baron, when he and the Judges who concurred in his opinion, as well as Lord Hatherley, considered that those arguments must yield to what they deemed the plain provisions of the Act of Parliament—that a petitioner should be absolutely entitled to a decree of dissolution of marriage upon proving certain facts, though the respondent would be precluded by mental incapacity from offering a defence.

The difficulties which are presented in the case of a lunatic petitioner are, indeed, different in character, but they do not appear to me to be more formidable than those to which I have adverted in the case of a lunatic respondent. If the proceedings are in the one case to be put on the same footing as other civil proceedings, I can see no reason why they must not be so in the other. If an insane respondent must defend herself as best she may by means of a guardian *ad litem*, I do not see where the Act has indicated that an insane petitioner may not institute a suit for divorce (through his committee), as he might sue for the breach of an ordinary contract. The only provision which has been pointed to as having such an effect is the 41st section, which requires the petitioner to verify his or her petition by affidavit, so far as he or she is able to do so; but, as Lord Hatherley has pointed out, this section is equally

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applicable to suits for nullity and judicial separation, which could undoubtedly, before the Act of 1857, be instituted on behalf of a lunatic by his committee. It cannot be supposed that it was intended by the mere provision that the facts should be verified by the petitioner's affidavit to prevent for the future such suits being instituted. I entertain no doubt that I have power in such cases to allow the husband's committee, who would, in fact, be the petitioner on the lunatic's behalf to make the required affidavit; and that is what has been done in this case, without objection on the part of the respondent.

Another argument has been urged, to which undoubtedly great moral weight must be allowed, that the right to sue for a divorce is personal, and cannot be exercised by any but the individual himself who has been wronged. He might, if he were sane, condone his wife's offence; he might be conscious of matrimonial offences committed by himself, which would legally debar him from obtaining a decree, and which his conscience might therefore prevent his asking for. But these arguments are equally applicable to suits for judicial separation, which it is conceded may be maintained on behalf of lunatics. It has, however, been urged—and for this the great authority of Lord Stowell has been invoked—that in these cases the lunatic, if he recovered his senses, might forgive his wife and take her back, whereas, in cases of dissolution, the mischief, if he should regard it as such, might be irreparable, for his divorced wife might have married some one else; but this argument should rather be addressed to the discretion of the Lords Justices, without whose consent these proceedings cannot be taken, than urged on this occasion, for it is to be observed that proceedings for judicial separation would, in some cases, be productive of as great a personal hardship to a lunatic husband as a dissolution of his marriage. Though insane on some subjects he might be capable of deriving comfort and advantage from the society of his wife, and might be willing to overlook her frailty in consideration of her kindness to himself or his children. Yet there is only

the exercise of the discretion of the Lord Justices to prevent such a husband having an erring but perhaps still beloved wife for ever debarred from access to him. I should add, that the possibility of a husband forgiving his wife's adultery is not to be regarded as remote. It is a fact of every-day occurrence, as the records of this Court abundantly shew.

On the other hand, it cannot be denied that if reasons of expediency are to be regarded, great wrong might arise from holding that no proceedings for divorce can be maintained against the adulterous wife of a lunatic. She might be left in possession of property settled on her by her husband, which she and her paramour might enjoy to the exclusion of the lunatic; she might exercise powers of appointment in favour of the paramour or the children of her and his adultery, or spurious offspring might be foisted upon her husband and his family, by which the devolution of estates or titles might be diverted in favour of illegitimate objects. Those evils could only be avoided by a dissolution of the marriage. The consideration which has pressed upon me in support of the respondent's contention is this—It is well known that it is a part of the religious faith of all Roman Catholics, and of many members of the Church of England, that the bond of marriage is indissoluble. It is certainly startling that if a member of the Roman Catholic, or of the Anglican Church, believing in his conscience that the dissolution of a marriage is unlawful in the sight of God, should have the misfortune to become insane, the committee of his estate might be authorised, on account of some question of money, to obtain a decree dissolving his marriage. And I do not feel that this consideration is satisfactorily disposed of, by the fact that the Lords Justices have a discretion in the matter, for how can they, or any human tribunal, determine what might be the conscientious conviction of anyone on such a subject? But this, and all other considerations of a like kind, appear to me to be overpowered by the decision of the House of Lords, which seems to amount in substance to this—that as proceedings for divorce are civil, though no provision for

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the case of lunatics is contained in the Act, recourse must be had in such a case to the ordinary forms of civil Courts where lunatics are litigants. I am unable to see any distinction between the cases of lunatic petitioners and lunatic respondents, and I adopt the language of Lord Penzance—"I say lunatic petitioners as well as respondents, for there is no distinction made in the Act. The words throughout are quite general, and there is no middle ground between the two opposite opinions, that these words include lunatics or exclude them altogether." For these reasons I am of opinion that the judgment of the House of Lords is, by necessary implication, binding on me on the present occasion, and I must, therefore, hold that the insanity of a husband or wife is not a bar to a suit by the committee for the dissolution of the lunatic's marriage.

It only remains for me to consider the minor questions which were raised on the argument. First, it is said that it is not alleged in the petition that William Baker was incurably insane, or that he will not recover within a reasonable time. But what more can be said on such a subject than that there is no present prospect of his recovery? This is equivalent to saying that there is no present prospect that he will recover within a reasonable time, or any other time, although it cannot be alleged that it is impossible that he may, after some unknown or unascertainable period, be restored to reason. No application has been made to me to postpone the trial, for the purpose of being informed whether there is a probability of the lunatic at some future time being sane, but the demurrer is based on the assumption that while he remains insane the suit cannot be maintained. If the Court is to hold its hand till all hope is extinguished, it must wait till the Greek Kalends.

Another point, which the learned counsel for the respondent has taken, is that the right to institute a suit for a dissolution of marriage, if it exist at all, belongs not to the committee of the estate, but to the committee of the person. I think that this is not a question of law, but a matter for the discretion of the

Lords Justices. They probably considered, that as all litigation involves liability to costs, it belongs rather to the keeper of the purse than of the person to control the proceedings by which they would be incurred.

Solicitors—Thomas White & Sons, agents for E. M. Harwood, Bristol, for petitioner; Surr, Gribble & Bunton, agents for G. E. Derry, Plymouth, for respondent.

ADMIRALTY. }  
1880.  
March 21. }

THE ARIZONA.\*

*Appeal from Board of Trade Inquiry—Suspension of Officer—Wrongful Act or Default—Merchant Shipping Act, 1854, s. 242—Costs of Appeal.*

*A shipping casualty must be actually caused or contributed to by the master to enable the Court of Inquiry to suspend his certificate. The Court of Appeal, if it reverses the decision of the Wreck Commissioner, will give the appellant his costs unless there has been such misconduct on the part of an officer as to render an inquiry reasonable, and if unsuccessful the appellant must pay the costs of the Board of Trade.*

This was an appeal of Thomas Jones, late master of the steamship *Arizona*, against a report of the stipendiary magistrate (Mr. Raffles), after an enquiry held at St. George's Hall, Liverpool, on the 4th of March, 1880, into the cause of a collision between the steamship *Arizona* and an iceberg on the 7th of November, 1879. The Court below found that a proper look-out had not been kept by the look-out men, and that the master should have had the men stationed elsewhere than on the skid bridge. The Court took away the certificates from the master and second mate (the officer of the watch) for six months. The master appealed under 42 & 43 Vict. c. 72. s. 1. sub-sec. 2 (1).

\* *Coram* The President (Sir James Hannen) and Sir R. J. Phillimore.

(1) Section 1, sub-sec. 2: "Where in any such investigation a decision has been given with respect to the cancelling or suspension of the certificate of a master, mate or engineer, and an application for a rehearing under this section has not

*The Arizona, Adm.*

*Clarkson*, for the appellant.

*Muir Mackenzie*, for the Board of Trade,  
left the matter in the hands of the Court.

THE PRESIDENT (SIR JAMES HANNEN).—Having heard the valuable observations which have been addressed to us upon the evidence in this case, and having had the opportunity of consulting those whose assistance we have the advantage of on this occasion, we feel that we are in a position at once to state the opinion to which the Court has arrived.

With regard to the first point which Mr. Clarkson has taken, that the finding of the Court below is not a finding which brings the case within the terms of the section of the Act (2) which has been referred to, inasmuch as it does not find that the casualty was occasioned by the default of the master, we have only to say that we do not consider it necessary to determine that question upon this occasion, because we are of opinion that putting the construction upon the language of the finding, which we think must be put upon it in order to make it a proper foundation for the suspension of the certificate, we interpret it as though it had stated that the default of the master was the cause of or contributed to the casualty. But we are of opinion that upon the facts it does not appear that there was any default on the part of the master which did, in fact, contribute to the casualty.

Although I have said that we do not think it necessary to determine that question of law now, yet it is undoubtedly worthy of observation that neither in the formal report, nor in the reasons for it which have been given, does the learned Judge state anything from which it can be inferred that he entertained the opinion

that the default of the master was the cause of the casualty. The manner in which that part of the alleged default is dealt with, tends rather to shew that the learned Judge's mind was running in a different direction, and that he was expressing only a general opinion upon the importance of there being the best look-out upon a vessel at all times. And he has expressed the conclusion which he and those who assisted him arrived at, that the master had in fact not used a sound judgment in that matter, but that he had put the look-out in that which was not the best position. It is unnecessary for us to express any positive opinion upon that point. It may be that if this had been the first investigation of the case, those gentlemen who assist us now might not have taken so severe a view of the master's conduct as has been taken below; but I repeat it is unnecessary for us to express any opinion upon that point. Accepting the finding of the Court below, we come to the conclusion that that blame which is attributed to the master did not cause or contribute to the casualty in question, and that is proved from a consideration of a very few facts in the case.

It is obvious that where the men were on the skid bridge they had the opportunity of seeing all before them, diminished only to the extent that the foremast would lessen the range of their vision, and further diminished to the extent that the stem head would obscure a portion of the sea's surface immediately in front of the vessel. But for all other purposes their means of looking out were just as complete where they were as if they had been upon the whale back. Now it is perfectly clear, without attempting to form any accurate judgment as to what the time was which elapsed between the first seeing of the object, which afterwards turned out to be the iceberg, and the collision, that the men in the place in which they were did see the object for an appreciable time before the mate saw it. And it is clear that instead of doing what it was their duty to do, at once to call attention to something that was out of the ordinary course of things—they consulted with one another. The language which it is proved they used tends to shew

been made or has been refused, an appeal shall lie from the decision to the following Courts—(a) If the decision has been given in England or by a naval Court, the Probate, Divorce and Admiralty Division of Her Majesty's High Court of Justice."

(2) 17 & 18 Vict. c. 104. s. 242: "The Board of Trade may suspend or cancel the certificate of any master or mate in the following cases—that is to say (sub-sec. 2), if upon any investigation it is reported that the loss or abandonment of, or any serious damage to any ship, or loss of life has been caused by his wrongful act or default."

*The Arizona, Adm.*

that their minds had been upon the subject, before they gave the warning; because when the mate called out (which the look-out who has been examined says was a minute after he had seen it), their joint answer was, "We think it is ice," shewing that they had been deliberating upon it. It being clear, therefore, that they had seen it for an appreciable time before they gave warning, and there being nothing in their position which prevented their seeing it at a greater distance than they did in fact see it, the cause of the collision, if it was possible for them to have seen it sooner than they did, must be attributed to the fact that they did not keep a good look-out, that they did not give warning soon enough of that which afterwards turned out to be the iceberg. The truth of the matter seems to be this, that they, like their superiors, did not contemplate the contingency of falling in with an iceberg in that direction, and therefore they too long (unfortunately, as it is said in the judgment of the Court below) gave themselves up to the belief that it was the cloud in the bosom of which the iceberg was instead of seeing it was the iceberg itself.

For these reasons, treating the judgment as being that the default of the master caused the accident, we are of opinion that it is incorrect, and we accordingly reverse that finding, and the sentence that the certificate should be suspended, and we think the certificate should be returned to the master at once.

SIR R. J. PHILLIMORE concurred.

*Clarkson* applied for the costs of the appeal.—It is true no rule (3) exists as to costs in an appeal, but the Court below is empowered to give costs against the Board of Trade, and by analogy the Court of Appeal should do so if it think it desirable. This is clearly a case in which the Court should give costs, for the ap-

pellant has exercised a right given to him by the Legislature, he has succeeded in his appeal, and the Board of Trade are in the position of respondents, and should not be put in a more favourable position than ordinary parties to an appeal.

*Muir Mackenzie* opposed the application.

*Our. adv. vult.*

THE PRESIDENT (SIR JAMES HANNEN).—The Court decided in this case that assuming the correctness of the finding of the Court below that the master was in default in not placing the look-out in the most efficient position, it did not appear from the evidence that that default caused or contributed to the casualty. And we therefore reversed the finding, and the suspension of the master's certificate.

On this decision the question arose, what direction we should give on the subject of costs, and as this was the first appeal under the provisions of the Act of last session (42 & 43 Vict. c. 72), we took time to consider whether we could lay down any rule as to costs in this and future cases.

We have come to the conclusion that, as the action of the Court below in suspending the certificate proceeds on the invitation of the Board of Trade, we ought, where we think the certificate has been improperly suspended, to give costs to the successful appellant, unless we should be of opinion that he has been guilty of such misconduct as rendered an enquiry as to the suspension of his certificate reasonable.

In the present case we do not consider that the master has been guilty of such misconduct, and we therefore direct that the Board of Trade pay him the costs. It must be understood that where the appeal is unsuccessful the appellant will, as a rule, be condemned in costs.

SIR R. J. PHILLIMORE concurred.

(3) Since the above case was argued, the "Additional Rules as to Investigations into Shipping Casualties, 1880," have come into force; by rule 6 (i), "The Court of Appeal shall have power to make such order as to the whole or any part of the costs of and occasioned by the appeal as may seem just." The judgment of the Court, therefore, shews how this rule will be acted on.

Solicitors—Gregory & Co., agents for Hill & Dickinson, Liverpool, for appellant; W. Murton, for the Board of Trade.

DIVORCE. }  
1880. } ANSDALL v. ANSDALL, SLED-  
March 2, 9. } DALL AND CROCKETT.

*Settlements—Variation of—No Children of Marriage—Matrimonial Causes Act, 1878—Retrospective Operation.*

*In contemplation of their marriage, a settlement was made by the petitioner on the respondent. There was no issue of the marriage, and a decree nisi for its dissolution, by reason of the respondent's adultery, was pronounced on the 9th of May, 1878, and the decree was made absolute in November of the same year. On the 27th of May, 1878, the Matrimonial Causes Act, 1878 (41 Vict. c. 19), which allows the Court, notwithstanding that there are no children of the marriage, to exercise the powers vested in it by 22 & 23 Vict. c. 61. s. 5, was passed:—Held, that the Court had jurisdiction, under the Act, to vary the settlement.*

On the 9th of May, 1878, a decree nisi for the dissolution of the marriage of the petitioner and respondent, by reason of the adultery of the respondent, was pronounced by the Court, and the decree was made absolute on the 12th of November, 1878.

By an indenture of settlement, made in contemplation of their marriage, and bearing date the 26th of April, 1865, the petitioner settled a policy of insurance on his own life for 1,000*l.*, upon the trusts set out in the judgment of the Court.

There was no issue of the marriage. Between the dates of the decree nisi and decree absolute, namely, on the 27th of May, 1878, the Act 41 Vict. c. 19, came into operation. After the decree absolute an order of the Court, dated the 3rd of January, 1879, was made, with the consent of the petitioner, that he should pay or cause to be paid to the respondent for her maintenance, during their joint lives, or so long as she was sole and unmarried and led a chaste life, the annual sum of 150*l.*

Subsequently, the usual petition was filed for variation of the settlement, and the Registrar reported that, assuming the Court had jurisdiction to do so, the

respondent's interests under the settlement ought to be extinguished.

*C. A. Middleton*, for the respondent, objected to any variation of the settlement. There being no children of the marriage, the Court had no jurisdiction in the case under 22 & 23 Vict. c. 61. s. 5. The settlement was executed, the suit commenced, and a decree nisi for dissolution of the marriage pronounced before the date of the Matrimonial Causes Act, 1878, and the Act was not retrospective. An Act was only retrospective where it affected practice and procedure, and not as to rights. The respondent had a right in the settlement at the date of the Act of 1878, and that right would only be extinguished by reason of a matrimonial offence committed subsequently to the Act coming into operation—*Hitchcock v. May* (1); *Thompson v. Lock* (2); *Charlesworth v. Holt* (3).

*Inderwick* (with him *Pritchard*), for the petitioner, submitted that the Act was remedial, and therefore retrospective in its operation, unless there could be found in the Act a clear intention to the contrary—*Page v. Bennett* (4); *The Ironside* (5); *Burns v. Hay* (6); *Maxwell's Construction of Statutes*, 201. The words of the Act permitted the Court to exercise the powers of the previous Act (22 & 23 Vict. c. 61), and shewed that it was intended to give the Act a retrospective operation.

*Our. adv. vult.*

The following judgment was (on March 9) delivered by

THE PRESIDENT (SIR JAMES HANNEN).—This was a suit by a husband for dissolution of marriage. A decree nisi was pronounced on the 9th of May, 1878, and this decree was made absolute on the 12th of November, 1878. The petitioner, by his marriage settlement, assigned to trustees a policy on his own life for 1,000*l.*, for the benefit of the wife, for her

(1) 6 Ad. & E. 943.

(2) 16 Law J. Rep. C.P. 76.

(3) 43 Law J. Rep. Exch. 26; Law Rep. 9 Exch. 38.

(4) 29 Law J. Rep. Chanc. 398.

(5) 1 Lush. Rep. 458.

(6) 1 Dowl. & L. 661.

*Ans dell v. Ans dell, Div.*

life or widowhood, and after her death or second marriage without child, or issue of deceased child by the said marriage, to the husband's next-of-kin, and the petitioner covenanted with the trustees to keep up the policy. There were no children of the marriage.

After the dissolution of the marriage, the petitioner consented to an order being made by the Court that he should pay to the respondent 150*l.* per annum during their joint lives, so long as she should remain unmarried and lead a chaste life, and the petitioner presented a petition for the variation of the settlement, by extinguishing the interest of the respondent in the said policy.

Assuming that I have the power to grant the prayer of this petitioner, I think it just and reasonable that I should do so. But it is contended that the Court has no such power. This depends on the construction to be put on the 5th section of 22 & 23 Vict. c. 61, and the 3rd section of 41 Vict. c. 19.

By the first of those it is enacted, that the Court, after a final decree of dissolution of marriage, may enquire into the operation of ante-nuptial or post-nuptial settlements, made on the parties whose marriage is the subject of the decree, and "may make such orders, with reference to the application of the whole or a portion of the property settled, either for the benefit of the children of the marriage or of their respective parents, as to the Court shall seem fit." It was held in the case of *Corrance v. Corrance* (7) that the Court had no power to deal with marriage settlements under this section unless there were issue of the marriage living at the time of the application to the Court for alteration of the settlements.

If the law had remained unaltered I must, on the authority of that case, have rejected this petition, because there are no children of the marriage which has been dissolved; but by the 3rd section of the Matrimonial Causes Act, 1878 (41 Vict. c. 19), which came into operation on the 27th of May, 1878, it is enacted, that "the Court may exercise the powers vested in it by the provisions of section 5 of 22

& 23 Vict. c. 61, notwithstanding that there are no children of the marriage."

It was contended that this enactment does not give the Court power to deal with this marriage settlement, because the decree *nisi* was pronounced before the Act came into operation, and that it would be giving a retrospective effect to the enactment if the prayer of this petition were granted, and that it did not appear that the section was intended to have a retrospective operation. Several cases were cited, illustrative of the well-known maxim referred to by Lord Coke in 2 Institut. 272—"Nova constitutio futuris formam imponere debet non præteritis." Little assistance can be derived from those authorities in determining in this particular case whether the Legislature intended that the new enactment should be operative with respect to pending litigation. The general rule no doubt is "that the law as it existed when the action was commenced must decide the rights of the parties in the suit, unless the Legislature expresses a clear intention to vary the relation of the litigant parties to each other"—*Hitchcock v. May* (1). The question in each case must be whether this intention of the Legislature is clearly manifested. It is a rule in the construction of statutes that the natural and ordinary meaning must be given to the language of an Act of Parliament, unless it would lead to some manifest absurdity or injustice which it cannot be presumed the Legislature intended. Here the language of the section is peculiar, it does not purport to give a new power, but says that the Court may exercise its existing powers, notwithstanding the absence of the conditions on which they had been held to depend. This has more analogy with a legislative interpretation of the 5th section, than a "Nova institutio." The Court is still acting under the authority of that section, and I cannot see that this leads to any injustice to the respondent. But if the coming into operation of the 3rd section of the late Act is to be regarded as marking a new point of departure, it did not alter the law applicable to the proceedings which were then pending against the respondent. These were solely for dissolution

(7) 37 Law J. Rep. P. & M. 44; Law Rep. 1 P & D. 495.

*Ansdell v. Ansdell, Div.*

of the marriage, and the new enactment merely enlarges the consequences which might follow on a future final decree for dissolution, when the time should arrive for the Court to exercise its discretion in determining what would be fit to be done in the circumstances of the case. Proceedings for variation of the settlements are totally distinct from those for the dissolution of the marriage. It is only after a final decree of dissolution that the Court can be set in motion by a fresh petition to enquire into the existence of settlements, and to order a different application of the settled property. In the present case the new enactment came into force before the final decree. The Court was, therefore, armed with this enlarged power long before these proceedings were commenced, or could have been commenced. On these grounds I am of opinion that the Court is entitled to make the order asked for, and conceiving it to be fit and just to do so, I confirm the Registrar's report, and extinguish the respondent's interest in this policy.

Solicitors—Pritchard, Englefield & Co., for petitioner; Ayerton & Biscoe, agents for G. Boydell, Chester, for respondent.

PROBATE. }  
1880. }  
June 6, 22. } GOULD v. LAKES.

*Will—Evidence—Will prepared by Testatrix and contained in two Sheets of Note Paper—Declarations of Intention by Testatrix before Execution of Will—Declarations after Execution shewing Belief that Intention had been effected—Both Classes of Declarations admitted in Evidence to prove Constituent Parts of the Will at the Time of its Execution.*

*Oral and written declarations of a testator, whether made before or after the date of execution of a will, are admissible in evidence for the purpose of shewing what were the constituent parts of the will at the time of execution.*

*M. R. made and duly executed her last will on the 1st of August, 1872. On her death in 1879, the will was found in an envelope in her writing-desk. It was contained in two sheets of note paper stitched together book-wise. The will was all in the handwriting of the testatrix (with the exception of the attestation clause, which was filled in by one of the attesting witnesses), and commencing with the first page of the outer sheet, it ran: "I appoint my nephews, R. J. G. and R. G. L. to be my joint executors to carry my will into effect. I appoint my nephew, R. J. G., to be my executor and sole residuary legatee.—M. R.*

*"And placed with my will the 1st day of August, 1872." The following page was a blank, and the will was continued on the inner sheet, which was paged, 1, 2, 3, 4: "The last will and testament of me," &c., and concluded with the attestation clause on the 4th page. The next, the 3rd page of the outer sheet, was a blank, and the last contained the indorsement: "The will of M. R., August 1, 1872." The attesting witnesses were unable to say what were the contents of the will, or whether it was contained in one or two sheets of paper:—*

*Held, that declarations of intention by the testatrix before the execution of the will, and declarations by her subsequent to the execution, shewing the belief that she had effected her intention, were admissible in evidence, with the view of shewing what were the constituent parts of the will at the time of its execution.*

Dame Martha Rashleigh (the widow and relict of Sir Colman Rashleigh, of Prideaux, in the parish of Luxulian, Cornwall) died at Exmouth, Devon, at the advanced age of ninety-three years, on the 9th of June, 1879.

She made and duly executed her last will and testament on the 1st of August, 1872. On her death the will was found in her writing-desk in an envelope, which had been apparently thrice opened and as often re-sealed. It was all in her own handwriting with the exception of the attestation clause, and was contained in two sheets of old fashioned note-paper, stitched together book-wise with a worsted thread. Commencing with the first page of the outer sheet, the will ran thus:—

*Gould v. Lakes, Prob.*

"I appoint my two nephews, Robert John Gould and Robert Gould Lakes, to be my joint executors to carry my will into effect. I appoint my nephew, Robert John Gould, to be my executor and sole residuary legatee.

"Martha Rashleigh.

"And placed with my will the 1st day of August, 1872.

"Stanley Lodge, Exmouth."

The following page was a blank, and the will was continued on the inner sheet, which was pagged 1, 2, 3 and 4. On page 1 it ran:—

"The last will and testament of me, Martha Rashleigh, widow of Sir John Colman Rashleigh, baronet, of Prideaux, in the parish of Luxulian, Cornwall.

"I bequeath to my nephew, John Nutcombe Gould, and to Catherine, his wife, the income for their lives of the sum of 5,000*l.*; at their death the aforesaid 5,000*l.* to be equally divided and given to their children. I bequeath to each of their children at my death the sum of 100*l.*, free of legacy duty. I appoint Robert John Gould and Robert Gould Lakes as trustees to the above legacy.

M. R.

"H. H. T.

"W. P. H."

(This last clause (the appointment of trustees of the legacy) was an interlineation, but was duly signed and attested by initials.)

"I bequeath to my niece, Frances Gould, the sum of 100*l.*

"I bequeath to my niece, Charlotte Elliott, widow, the sum of 100*l.*

"I bequeath to my niece, Hannah Nutcombe Gould, the sum of 100*l.*

"Martha Rashleigh.

(Page 2.)

"I bequeath to my nephew, John Lakes, vicar of Liskeard, Cornwall, the sum of 1,000*l.* free of legacy duty.

"I bequeath to my nephew, Robert Gould Lakes, the sum of 1,000*l.*, free of legacy duty.

"I bequeath to my great nephew, Robert George Oxenham, the sum of 300*l.*

"I bequeath to my great nephew,

Frank Nutcombe Oxenham, the sum of 300*l.*

"I bequeath to Theodore Vincent Webb, of Great Gransden, Caxton, Cambridgeshire, the sum of 50*l.*

"Martha Rashleigh.

(Page 3.)

"I bequeath to my dear friends, Eliza Caroline and Emma Buller, of Exmouth, the sum of 50*l.* to each, free of legacy duty.

"I bequeath to Elizabeth Sophia Bull, of Truro, Cornwall, the sum of 50*l.*, free of legacy duty.

"Annuities to my Servants.

"I bequeath to my servant, William Harris, an annuity of 60*l.* per annum, free of legacy duty.

"I bequeath to my servant, Richard Thomas, an annuity of 20*l.* per annum, free of legacy duty.

"I bequeath the sum of 20*l.* to my present gardener, Charles Richards, if in my service at the time of my death.

"Martha Rashleigh.

"(Page 4.)

"I bequeath to my stepson, Sir Colman Rashleigh, baronet, of Prideaux, Luxulian, Cornwall, the sum of 5,000*l.*

"I declare this to be my last will and testament, and in witness hereof I hereunto set my hand and seal this 1st day of August, in the year of our Lord, 1872.

"Martha Rashleigh.

"Signed, sealed and declared to be her last will and testament by the said Martha Rashleigh, the testatrix, in our presence, who in her presence and in the presence of each other at the same time subscribe our names as witnesses.

"Henry H. Tremayne, Manager of the West of England Bank, Exeter; and

"William P. Hart, Accountant, West of England Bank, Exmouth."

The next page of the document (the third of the outer sheet) was a blank, and the last contained the indorsement—  
"The will of Martha Rashleigh, August 1, 1872."

The plaintiff (Robert John Gould) propounded the will. He died during the progress of the suit, and the action was continued by his sole executrix, his widow.

*Gould v. Lakes, Prob.*

The statement of claim alleged that the testatrix made her last will, bearing date the 1st day of August, 1872, and in the said will appointed the plaintiff one of her executors and residuary legatee, and that the appointment of the plaintiff as executor and residuary legatee was contained in the first sheet of the said will and formed part thereof.

The statement of defence admitted that the deceased made her last will on the 1st of August, 1872; and it alleged that in the said will the testatrix bequeathed a legacy to the defendant, but it denied that she therein appointed the plaintiff one of her executors and her residuary legatee. It further denied that the appointment of the plaintiff as executor and residuary legatee was contained in the first sheet of the said will, and that it formed part thereof; and it alleged that the words appearing on the cover, in the statement of claim called the first sheet, of the said will was not written previous to the execution of the said will, and that they did not form part thereof at the time of such execution.

The plaintiff joined issue upon those paragraphs of the statement of defence, and also upon so much of the first paragraph of the said statement as related to the appointment of the plaintiff as an executor and residuary legatee.

The issues raised on the pleadings were tried by a special jury before the President (Sir James Hannen) on the 6th of June, 1880.

*Sir John Holker* and *Bayford*, for the plaintiff.

*Inderwick* and *Searle*, for the defendant.

The attesting witnesses to the will were called on behalf of the plaintiff, but beyond the fact of its due execution by the testatrix in their presence, and their initialling the interlineation, their memory was a blank on the subject. Neither could say whether it was contained in one or two sheets of paper; and Mr. Tremayne, who had read the will before its execution, and who had filled up the attestation clause at the request of the testatrix, had no recollection whatever of its contents. It appeared, however, that before the execution of the will the testatrix re-

peatedly expressed, orally and in letters, her intention of making her nephew, Robert John Gould, her executor and residuary legatee; and it further appeared, from declarations of the testatrix contained in letters written after the execution of the will, and repeated by her shortly before her death, that she believed she had given effect to this intention in her will.

*Sir J. Holker* tendered the declarations, both those made before as well as those after the execution of the will by the testatrix, as evidence for the purpose of proving what were the constituent parts and contents of the will at the time of execution. He did not offer them as evidence of the due execution of the will. The case was covered by the decision of the Court of Appeal in *Sugden v. St. Leonards* (1).

*Inderwick* objected to the reception of both classes of declarations. The will was in existence and before the Court, and the case of *Sugden v. St. Leonards* (1) did not apply. The question which arose on the appearance of the papers was whether the outer sheet formed part of them when the will was executed. It was a question of due execution, and no declarations by the testatrix were admissible.

THE PRESIDENT ruled that the declarations were admissible for the purpose for which they were tendered.

The jury found their verdict in favour of the plaintiff.

THE COURT pronounced for the will as contained in the two sheets of paper, with the interlineation, and allowed the defendant costs out of the estate, the litigation having arisen from the state in which the testatrix had left the papers.

*Inderwick* (with him *Searle*) (on June 22) moved the Court, on behalf of the defendant, for a rule *nisi* for a new trial, on the ground of the reception of inadmissible evidence and of misdirection. The question in the case was simply the due execution of the paper. For that purpose evidence of intention was inad-

(1) 45 Law J. Rep. (App.) P., D. & A. 45; Law Rep. 1 P. D. 154.

*Gould v. Lakes, Prob.*

missible. The jury could only look at the paper itself, and see whether it formed necessarily part of those submitted for probate. Proof of the due execution of the will could not be made by any statement which the testatrix herself might make.

[THE PRESIDENT.—But this has nothing to do with the question of execution.]

If the suggestion were that it was a question of the contents of the will, the difficulty was that there were two documents, each in itself perfect. That part of the paper beginning "This is the last will and testament of me," &c., was duly executed and free from ambiguity; but that could not be said of the outer paper—"I appoint my nephews, Robert John Gould and Robert Gould Lakes, to be my executors to carry my will into effect, and appoint my nephew, Robert John Gould, residuary legatee. Signed by me and placed with my will, 1st August, 1872." The inference to be drawn from the language of the paper was that it was written after the will itself was written, and there was no evidence to shew that it was in existence and formed part of the will when the document was signed by the testatrix and attested by the witnesses. The jury were swayed by the evidence of intention, and when the case was so presented to them they had no option but to find that the testatrix had given effect to her intentions in her will. *Sugden v. St. Leonards* (1) did not apply. There the question was as to the contents of a lost will; here the documents were in existence, and the Court could not go beyond the proof which they themselves furnished.

THE PRESIDENT (SIR JAMES HANNEN).—I am of opinion that the question Mr. Inderwick desires to raise does not arise in this case, because I am of opinion that there are no statements in the letters written by the testatrix subsequent to the execution of the will which had any tendency to mislead the jury—I say mislead from Mr. Inderwick's point of view—no tendency to mislead the jury upon the only issue which has been raised for their determination. I distinctly told the jury that the question was not what the testatrix had intended, but what she

had in fact done. And I did no more in reference to her intentions, though Mr. Inderwick himself did in stating in effect that there was no dispute what her intentions were. The question was, Had she carried them out? I expressly left that to the jury, and I cannot suppose that a special jury could be so wanting in capacity that they could not distinguish between the two things. It was proved abundantly in the letters written both before and after the will, that she intended to constitute her nephew residuary legatee. But the question was, whether she had done so by bringing into connection with one another these two sheets of paper before she put her hand to the will; and I told the jury in the most distinct terms that that was the only question they had to consider. If that be so, how can it be said that any substantial wrong or miscarriage resulted from the admission in evidence of letters in which she shews that her mind continued after the making of the will in the same state in which it was before the making of the will, namely, that she desired her nephew should be residuary legatee? I repeat, therefore, on that ground I should refuse the rule.

But I do not disguise my opinion that statements made by a testator after the making of the will, not merely with reference to the contents of a lost instrument, but with reference to the constituent parts of an existing instrument, are admissible. That has been decided by the Court of Appeal in *Lord St. Leonard's Case* (1). There is no distinction between this case, where the question is what formed part of the will, and that case, where the question was, what formed the whole will where the will is lost. We are considering now after the evidence what documents together constituted the will. Though Mr. Inderwick objects to the admission of the letters before the execution of the will, I should have thought it clear beyond the possibility of doubt that when you are considering whether or not several pieces of paper constituted the will, they would be admissible in evidence to shew the intention of the testatrix to make dispositions in conformity with those which are found

*Gould v. Lakes, Prob.*

in these several sheets of paper. Here the question is, whether these two papers were joined together or were before the testatrix at the time she signed. The question of law would not be different if the suggestion were that this first sheet was a forgery; and suppose a will consists of several sheets, and the suggestion is that one of them is a forgery, or that it is an interpolation by somebody after the event, can it be said that in order to establish that this sheet was a genuine part of the will you could not give in evidence a statement of the testatrix before she made the will that she was going to dispose of her property in the manner in which it appears to be left in the paper alleged to have been interpolated? And, in my opinion, statements to the same effect subsequent to the making of the will would also be admissible in order to shew the state of the testatrix's mind and intentions. It would be an ingredient in the consideration whether or no the supposed interpolated sheet were a part of the will at the time of execution, but, as I have said, I see no distinction between the statements made by a testatrix as to her intentions before or after the execution of the will. I think that the case is governed by the decision of the Court of Appeal in the case of *Sugden v. St. Leonards* (1), and I undoubtedly am of opinion that any statements of the testatrix, whether made before or after the execution of the will, are admissible in evidence with a view of shewing what were the constituent parts of the will. I, therefore, refuse the application.

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Solicitors—Geare & Son, agents for B. C. Gidley, Exeter, for plaintiff; Bell & Steward, agents for Carlyon & Stephens, St. Austell, for defendant.

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ADMIRALTY. }

1880.

Jan. 27.

Feb. 24. }

THE AFRIKA.

*Distribution of Salvage — Demurrer — Merchant Shipping Act, 1854, s. 182 — Equitable and Bona Fide Agreements.*

*In an action for distribution of salvage the defendants may plead an agreement by which the plaintiffs have accepted certain sums in respect of the amount of salvage reward due to them respectively. Such a pleading is not demurrable under section 182 of the Merchant Shipping Act, 1854, but the Court will at the hearing consider whether or not it is an equitable agreement and entered into in good faith.*

This was a demurrer to a paragraph in a statement of defence in an action for distribution of salvage. The statement of claim narrated in the first twelve paragraphs the salvage services rendered by the plaintiffs, part of the crew of the *Afrika*, by the remainder of the crew, and by the ship of which the defendants, Messrs. Bailey & Leetham, were the owners. The statement of defence admitted the facts of the case, except those stated in paragraph 13, and it was to the defence as raised in this part of the statement of defence that the demurrer referred.

The following are the material pleadings.

Statement of claim.

13. The defendants have received for and in respect of the said services the sum of 3,000*l.* as and for salvage reward for the services rendered as aforesaid to the *Afrika*, her crew and cargo, and before its ascertainment or receipt they paid to the plaintiff, William Bristow, the sum of 15*l.*, and to the remaining plaintiffs 12*l.* 10*s.* each, on account of the sums due to them in respect of their services aforesaid; but the defendants, though requested by the plaintiffs so to do, have wholly refused to pay the plaintiffs, or any of them, any further sum or sums as their equitable proportion of the said sum of 3,000*l.*, and there still remains due and owing from the defendants to the plaintiffs, a large sum as such

*The Afrika, Adm.*

proportion as aforesaid, and the plaintiffs are unable to obtain the same without the assistance of this honourable Court.

## Statement of defence.

6. In answer to the 13th paragraph the defendants admit and allege that they have received the sum of 3,000*l.*, and no more, as and for salvage reward for and in satisfaction of all claims for all the said services rendered to the *Afrika*, her crew and cargo, by the *Durham*, her master and crew, and they say that the plaintiffs, Alexander Beveridge, Haken Olsen, Richard Randall, John Millar, James William Gillies and Henry Green, and certain other members of the said crew of the *Durham*, namely, J. W. Good, T. Wilkinson and A. Anderson, instructed Messrs. Singleton & Martinson, solicitors, to act as their solicitors, and to apply on their behalf to the defendants for the payment of their respective shares of the said salvage, and authorised the said solicitors to settle their respective claims in respect of the said salvage with the defendants, and that, after the sum of 3,000*l.* had been finally ascertained and settled as the total amount of salvage in respect of the said services, and after such sum had come to the hands of the defendants or their agents, and after the said plaintiffs and their solicitors had full knowledge thereof, the said plaintiffs and the said J. W. Good, T. Wilkinson and A. Anderson, by their said solicitors, agreed with the defendants to accept from the defendants the sum of 132*l.* 10*s.* in settlement of the claims of the said William Gillies, Haken Olsen, Alexander Beveridge, Richard Randall, John Millar, Henry Green, J. W. Good, T. Wilkinson and A. Anderson respectively, for and in respect of the said salvage, and their costs and the sum of 132*l.* 10*s.* were, on the 8th day of July, 1879, accordingly paid by the defendants and received by the said solicitors acting on behalf of and with the authority of the said Alexander Beveridge, Haken Olsen, Richard Randall, John Millar, James William Gillies, Henry Green, J. W. Good, T. Wilkinson and A. Anderson, in settlement of their respective claims for salvage and costs. The defendants crave leave to refer to

the authority in writing given by the said plaintiffs to the said solicitors, and to the receipt for the said sum of 132*l.* 10*s.*

## Reply and demurrer.

3. The said plaintiffs, except as to so much of paragraph 6 of the statement of defence as admits the receipt by the defendants of the sum of 3,000*l.*, demur to such paragraph, and say that the same is bad in law, upon the grounds that such paragraph does not allege that the sums therein stated to have been paid to and received by the plaintiffs in settlement of their said claims were or are enough to satisfy the plaintiffs' claim in respect of the plaintiffs' shares of the said salvage, and also that the agreement in the said paragraph stated by and under which the plaintiffs agreed to accept, and did accept, the sums in the said paragraph mentioned in settlement of their respective claims, was and is a stipulation by which the plaintiffs consented to abandon a right which they had or might obtain in the nature of salvage, and that such agreement is wholly inoperative under the provisions of the Merchant Shipping Act, 1854, s. 182, and on other grounds sufficient in law to sustain this demurrer.

*Aspinall*, in support of the demurrer.—By section 182 of the Merchant Shipping Act, 1854 (1), no seaman can abandon any right he may have in the nature of salvage, and no agreement can defeat the right to a fair proportion of the salvage which always continues to exist. Every agreement which purports to settle a salvage claim, and does not shew on its face that the amount to be paid is an equitable sum, is an agreement by which a seaman abandons a right to salvage, and so falls within the operation of the statute, and that is the case here—*The Rosario* (2).

*Clarkson, contra.*

SIR R. J. PHILLIMORE.—This is a case of distribution of salvage. A steamship

(1) 17 & 18 Vict. c. 104, s. 182:—“and every stipulation by which a seaman consents . . . to abandon any right which he may have or obtain in the nature of salvage shall be wholly inoperative.”

(2) Law Rep. 2 P. D. 42.

*The Afrika, Adm.*

called the *Durham* rendered certain services on the 28th of March, 1879, in the Gulf of Finland, to a ship called the *Afrika*, and 3,000*l.* has been accepted as the total sum of salvage remuneration, and paid over to the owners of the *Durham*. Certain of the crew have brought the present action, in which they claim such portion of this sum as is due to them; and the owners of the *Durham*, who have appeared to defend this suit, in the 6th paragraph of their statement of defence aver that the plaintiffs had instructed certain persons to act as their solicitors, and agreed with the defendants as to the payment of the respective shares of the salvage reward, and had authorised the same solicitors to settle their claims with the defendants, and that, after the said sum of 3,000*l.* had been finally ascertained and settled, and after it had come to the hands of the defendants or their agents, and after the plaintiffs and their solicitors had full knowledge thereof, the plaintiffs agreed to accept a sum of 132*l.* 10*s.* in settlement of their claims. This paragraph is demurred to principally upon the ground that it sets up an agreement to accept a certain sum in respect of salvage remuneration, contrary to the provisions of section 182 of the Merchant Shipping Act, 1854, which renders it unlawful for any seaman to abandon his right to wages in the case of the loss of the ship, or abandon any right he may have or obtain in the nature of salvage. Now, it has been urged by counsel that any agreement of any sort or kind by which a seaman is to receive a certain sum in respect of salvage in lieu of the sum which might be awarded by the Court is invalid and wholly inoperative. This conclusion cannot, I think, be sustained, though I should not take the course of rejecting this demurrer if I thought that by so doing I was preventing the plaintiffs from contradicting the 6th paragraph of the defence. But it may be well that on this point I should refer to the law laid down in *The Enchantress* (3), which seems to be quite clear; and I find that Dr. Lushington there said, "I conceive a duty is hereby

imposed on me to decree upon application made what in my judgment is an equitable apportionment of salvage, unless I am barred by one of two circumstances—either an equitable agreement made between the parties or an equitable tender." The latter of these two circumstances we have not now to consider. Dr. Lushington goes on to say, "I will consider the present case in both ways: first, was there an equitable agreement made between the parties?" Now, in the present case, the terms of this agreement are not yet before the Court, and will only come under consideration when the matter is properly *sub judice*, when one of the questions to be determined will be whether the agreement, having been made by solicitors and approved by the parties, was, having regard to all the circumstances, equitable and fair. On the one hand, I think it is competent for the defendants to set up the defence which I find in paragraph 6 of their statement of defence; and on the other, I see no reason why the plaintiffs should not say, admitting the facts as to the making of the agreement through solicitors, yet having regard to all the circumstances, it is one of those agreements, either fraudulent or illusory, which this Court has always had jurisdiction to look into, and, if necessary, set aside, so as to reopen the question of the manner in which the salvage reward should be distributed. I therefore reject the present demurrer.

The question of the propriety of the agreement came under discussion on the hearing of the cause, and the following judgment was (on February 26) delivered by

SIR R. J. PHILLIMORE.—I am of opinion that this agreement does not militate against any of the sections of the Merchant Shipping Acts which have been referred to. The question before me is not whether, if the plaintiffs had been plaintiffs in an action of salvage, the Court would have awarded them more or less than the sum which they have agreed to accept, but whether any good ground has been shewn why the Court should interfere with the arrangement that has been

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(3) 1 Lush. 93; 30 Law J. Rep. Adm. 15.  
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*The Afrika, Adm.*

made. No doubt if any fraud or concealment had been shewn the Court would not hesitate to reopen the whole matter, but in my opinion no evidence has been offered which tends to show any fraud or concealment, or any improper conduct on the part of the defendants' agents, in order to induce the plaintiffs to sign a receipt. Throughout the whole transaction they were assisted by a solicitor who seems to have acted with perfect good faith, nor again is there anything, so far as I can see, extravagantly wrong in the actual settlement, as acquiesced in by the plaintiffs. I, therefore, dismiss this action, with costs.

Solicitors—H. C. Coote, agent for Cowell, Great Yarmouth, for plaintiffs; Rollit & Sons, for defendants.

## ADMIRALTY. }

1880.

May 4. }

THE HJEMMETT.

*Towage—Delay—Payment of extra Sum.*

*When a contract is entered into to tow a vessel from one point to another for a fixed sum, the tug cannot claim extra remuneration in the nature of payment for towage in respect of a delay which occurs during the transit without any fault on the part of the tug or the tow.*

This was an action commenced in the City of London Court, and transferred by consent to the Admiralty Division. By arrangement between the parties it was tried without witnesses or pleadings upon certain agreed facts.

The steam tug *Vivid* entered into an agreement with the ship *Hjemmett* to tow her from Sea reach to a London dock, for the sum of 13*l*. The *Vivid* accordingly took the *Hjemmett* in tow, and some time after doing so, the steamer *W. H. Ricketts* came into collision with the *Hjemmett*. The *Vivid*, with the *Hjemmett* in tow, arrived off Gravesend at 6.30 p.m. on the 26th of December, and the master of the *Hjemmett* insisted on staying at

Gravesend to clear away wreckage, and that the tug should be ready when the work was done, to complete the remainder of the service. The *Hjemmett* remained three days at Gravesend, and was then towed by the *Vivid* to the London dock. The *Vivid* brought her action for the sum of 18*l*., being payment at the rate of 6*l*. per day, for each day's delay at Gravesend.

The defendant had tendered the sum of 13*l*. in satisfaction of the claim.

*Clarkson*, for the *Vivid*.—A misfortune occurred to the *Hjemmett*, and so there was an interruption in the transit, and our tug has been in the service of the *Hjemmett* for a much longer period than was contemplated by the parties.

There was, in fact, a fresh contract to remain by the ship at Gravesend, and an implied contract for payment beyond the sum originally agreed upon.

[THE COURT.—Has this Court ever given further towage remuneration on account of some unforeseen circumstance having occurred during the transit?]

*Phillimore*, for the *Hjemmett*.—The tug did not choose to stipulate for special remuneration in case of any contingency, and so cannot claim more than the lump sum for which the contract was to be performed. The plaintiff is seeking for something which is neither properly salvage nor towage remuneration. He referred to the *Annapolis* (1) and the *Strathnaver* (2).

*Clarkson* in reply.

SIR R. J. PHILLIMORE.—In deciding this case I wish it first of all to be understood that I am giving no decision which in any way affects a case in which it can be contended that a salvage service has been grafted on to a towage contract. Here we have a definite agreement entered into, by which the *Vivid* was to tow the *Hjemmett* from one point to another for a fixed sum. Of course a subsequent accident may release the tug from the performance of the duty which she has contracted to undertake; or, again, she

(1) Lush. 356.

(2) Law Rep. 1 App. Cas. 58; 34 Law Times, N.S. 148.

*The Hjæmmest, Adm.*

may render salvage services to the tow. But this is not the case here, and the tug merely contends that she performed, a kind of outside towage service, the exact legal character of which it is somewhat difficult to define. It appears to me that I cannot entertain such a claim as that which is here put forward, and all that under the circumstances of this case the tug is entitled to obtain from the tow is the sum of 13l., the remuneration agreed upon for the service which she performed. I, therefore, dismiss the suit and give the defendant the costs of the action from the time of the tender of 13l.

Solicitors—Lowless & Co., for plaintiff; Waddilove & Nutt, for defendant.

PROBATE. { *In the goods of HIS HIGHNESS*  
1880. { *PRINCE HENRY THE SIXTY-*  
Jan. 27. { *NINTH OF REUSS-KÖSTRITZ*  
          { *(deceased).*

*German Will—Executor's Oath—Affirmation.*

A., a native of and domiciled in Germany, made and duly executed his last will and testament, with ten codicils thereto, according to German law, and thereof appointed B., his nephew, executor. The will was proved in the Court of Gera, in Germany. It was requisite that probate of it should also be obtained in this Court, and the necessary papers for the purpose, with due instructions, were forwarded to B., the executor, in Germany. The papers were returned by B., accompanied by an affirmation which was made by him before the British Vice-Consul at Breslau, but it contained no statement that he had a conscientious objection to the taking of an oath, so as to bring him within the exception created by the Common Law Procedure Act, 1854, section 20. The Court held that the affirmation was defective, and refused to receive the papers.

The deceased, Prince Henry the 69th of Reuss-Köstritz, in the empire of Germany, died on the 21st of February,

1878, having made and duly executed his last will and testament, with ten codicils thereto, according to German law, and thereof appointed Otto Theodore von Seydewitz, his nephew, and President of the German Imperial Parliament at Berlin, executor. The will was proved in the Court of Gera, in Germany, but it was necessary that probate of it should also be obtained in this Court, the deceased having died possessed as trustee of property in England. The necessary papers for the purpose were prepared in this country and forwarded to Germany, but were returned imperfectly executed. Fresh sets of papers were then forwarded to the executor, and his attention was specially called to the fact that by the law of England and the practice of the Court, he should make the usual affidavit required of applicants in such cases, unless he had a conscientious objection to the taking of an oath, which should be stated in the affirmation. The papers were, however, again returned, accompanied merely with an affirmation, which ran:—

"I, Otto Theodore von Seydewitz, late Governor-General of Wörlitz, and President of the German Imperial Parliament at Berlin, &c., the nephew of the deceased, solemnly declare and affirm and say that I believe the paper writing hereto annexed and marked by me to be an official copy under seal of the Court of Gera of the true and original last will and testament, with ten codicils thereto, of," &c.

The affirmation was made before Mr. Herman Herbert, British Vice-Consul at Breslau, but there was nothing to shew that the affirmant had a conscientious objection to the taking of an oath.

Bayford moved the Court to order that the papers be received in the registry, and that the grant of probate of the will and codicils might issue.

THE PRESIDENT (SIR JAMES HANNEN).—The case really has had perhaps an undue importance given to it. I will not speculate upon the causes of that, but I have thought it right to put in writing what I have to say upon the subject, in order that there may be no misunderstanding.

*In the goods of Prince Henry the 69th.*

By the law of England, speaking generally, no fact can be proved before a judicial tribunal otherwise than by the statement of a witness under the sanction of an oath. Exceptions have been made by various statutes in favour of particular persons. The only exception which need be referred to as having any bearing on the case is that created by the Common Law Procedure Act, 1854, section 20: "If any person called as a witness, or required or desiring to make an affidavit or deposition, shall refuse or be unwilling, from alleged conscientious motives, to be sworn, it shall be lawful for the Court or Judge, or other presiding officer or person qualified to take affidavits or depositions, upon being satisfied of the sincerity of such objections, to permit such person, instead of being sworn, to make his or her solemn affirmation or deposition in the words following"—and I have no power to dispense with this as I should with the mere rule of this Court: "I, A. B., do solemnly, sincerely and truly affirm and declare that the taking of any oath is, according to my religious belief, unlawful; and I do also solemnly, sincerely and truly affirm and declare," &c. Now, the applicant has not shewn that he comes within this exception, and I presume that he is unable to do so, as the papers have been returned to him from the registry with full directions, and he has declined to state that he has conscientious scruples to the taking of an oath, or, indeed, to give any reason for using an affirmation instead of an oath. It appears, however, from the papers which have been deposited in the registry that it is contended that his affirmation should be received, because it is alleged, though not proved, that in Germany voluntary oaths are illegal, and that no person can administer a voluntary oath to a German subject in Germany. The section of the Act above quoted was intended for the relief of persons who have a conscientious objection to the taking of any oath. Whether the applicant, who does not state that he has such scruples, can be excused from taking an oath on the ground suggested is a question which I have not at present the materials for determining. But I must observe that, even if the law of Germany

should be as it is suggested it is, it would not follow that the applicant would be entitled to give his evidence by affirmation instead of oath. It is indisputable that Acts of Parliament are enacted for British subjects, and that no foreign subject resident in his native country can be compelled to obey them, particularly when they run contrary to the laws of the foreign country. But, on the other hand, the English Legislature is entitled to impose what conditions it thinks expedient in the making of decrees by English tribunals, one of these conditions being that all evidence shall be given on oath, with the exceptions referred to. If this condition should work hardship on a litigant or witness who is forbidden by the law of his own country to comply with it, the English tribunal cannot obviate this hardship by setting aside the law which it sits to administer. But there is another rule of English law which the applicant has not at present complied with, and that is, that the laws of foreign countries must be proved as facts, and in the same way as other facts, by the oath of persons acquainted with them. In the present case no such evidence is offered, except a letter from a gentleman said to be connected with the British Vice-Consulate at Breslau, in which he states that the British Consul at Königsberg has advised in a certain way. As that gentleman is probably not responsible for the use which has been attempted to be made of his letter, I will only say with regard to it that it is not legal evidence in England of German law. The proper course to pursue in order even to raise the question which I am asked to consider is to obtain the evidence of some expert of what the German law is on the subject. I presume that the German law does not forbid a German in England to conform to English law, and, if it does not, the better course would be to obtain the evidence on oath from some German jurist in this country; and the question he will have to answer is this, "Where a German is obliged, in order to enforce his rights in England, to institute proceedings in an English Court of competent jurisdiction which requires facts to be proved before it upon oath, is he forbidden by the law

*In the goods of Prince Henry the 69th.*

of Germany to make oath of the facts he is required to prove in England?" I may observe that we also have a law which forbids the taking of voluntary oaths; but it has never been suggested that an oath is voluntary, and therefore unlawful within the meaning of the enactment, merely because the person need not make it, if he chooses to abandon the right for the enforcement of which it is necessary. I must, therefore, reject the application.

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Solicitor—W. B. Abbott.

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DIVORCE. }  
1880. }  
May 5. }

KNAPP v. KNAPP.

*Desertion—Wife's Petition for Dissolution of Marriage on the Grounds of Adultery and Cruelty—Petition withdrawn at Hearing—Fresh Petition filed after lapse of Two Years charging Adultery and Desertion.*

*The respondent eloped with a Miss S. on the 2nd of January, 1877, leaving his wife destitute. On the 16th of April, 1877, she filed a petition for divorce on the ground of his adultery and cruelty, but withdrew the petition at the hearing on the 22nd of November, 1877, it being doubtful on the evidence whether the charge of cruelty could be sustained. On the 12th of February, 1880, she filed a fresh petition praying for a decree on the ground of the respondent's adultery and desertion. The respondent had never contributed towards her support since he left her in 1877, and he was still living with Miss S. when the copy petition and citation were served on him on the 25th of February, 1880:—Held, that the petition was well presented and that the petitioner was entitled to a decree on the ground of the respondent's adultery and desertion.*

This was a petition by the wife for dissolution of marriage on the grounds of the husband's adultery and of desertion

for two years and upwards. The parties were married on the 18th of September, 1867, at the church of St. John's, Portsea, in Hampshire, and cohabited together at different places in England, among others at Dartmouth, where they were resident in 1876. At the end of November, 1876, the petitioner's health became impaired, and with the consent of her husband she went for change of air to some friends at Gateshead. She wrote from Gateshead to her husband asking him to come and spend the Christmas with her, and also for some money, but he took no notice of her letter.

The petitioner had had frequently to complain of his intimacy with a Miss Sutton, who was a frequent visitor at their house against the petitioner's wish, and on the 2nd of January, 1877, his wife being still at Gateshead, he eloped with Miss Sutton, leaving his wife and child wholly destitute. On the 3rd of January, 1877, the day following the elopement, he wrote to a fellow clerk a letter which contained this passage: "I ascertained a cruel report was being circulated in Dartmouth regarding Ada Sutton and myself, and which, though utterly false, would have stuck to us both; and after my acquaintance with her and both being fond of each other, I was determined to take her away and will eventually marry her." With the exception of one letter which he wrote to his wife very shortly after leaving Dartmouth, he never communicated with her after his elopement or contributed in any way towards her support.

On the 16th of April, 1877, the petitioner filed a petition in this Division praying for a dissolution of her marriage with the respondent by reason of his adultery and cruelty. No appearance was entered on behalf of the respondent. The case came on for hearing before the Court itself on the 22nd of November, 1877, but it being doubtful whether the charge of cruelty could be sustained, the petition was withdrawn by leave of the Court.

A fresh petition was filed by her on the 12th of February, 1880, praying for a decree on the ground of the respondent's adultery and desertion. The para-

*Knapp v. Knapp, Div.*

graph charging the desertion alleged that the respondent "has deserted your petitioner for two years and upwards before the date and filing of this petition without reasonable excuse." The copy petition and citation were served on the respondent at Bedford on the 25th of February, 1880, at which date he was still living with Miss Sutton, but he did not appear in the suit.

The case was heard before the Court itself on the 5th of May, 1880.

*Inderwick (Bayford with him), for the petitioner.*

On the conclusion of the evidence adduced in support of the petition,

THE PRESIDENT (SIR JAMES HANNEN) said—The case is perfectly clear and would not call for any remark were it not that I have found that some misapprehension exists in regard to desertion in circumstances like these. It is quite plain that when the respondent left his wife, eloping with another woman, there was at that time a desertion of the petitioner, and if that state of things had continued without anything more for two years, the petitioner would have been entitled to institute a suit for dissolution of marriage. It is true that she did institute a suit for dissolution of marriage upon the ground of cruelty and adultery, so that for some time before two years had elapsed she was seeking to have her marriage annulled; but that is not inconsistent with her afterwards abandoning that suit, and, after having waited the requisite time, instituting a fresh suit for dissolution on the ground of her husband's adultery and desertion, for, as it appears, he has, since he left her, been cohabiting with the woman in whose company he eloped. There never was a time at which the petitioner was bound to go back and live with him, because she was always justified in refusing to do so as long as he continued to live with the woman for whose company he had abandoned her; and, therefore, as it was in the beginning desertion on his part, as the circumstances have never been changed, that state of things which was a desertion in the first instance

has continued a desertion for now more than two years, and consequently the petitioner is entitled to succeed. I, therefore, pronounce a decree *nisi*, with costs, and custody of the children to the petitioner.

Solicitors—Crowder, Anstie, and Vizard, agents for Simpson & Hockim, Manchester, for petitioner.

DIVORCE. }  
1880.  
June 1, 8. }

WICKHAM v. WICKHAM.

*Dissolution of Marriage—Decree Nisi pronounced—Decree not made absolute—Re-marriage of Petitioner.*

The petitioner (the wife) obtained a decree *nisi* for dissolution of her marriage with the respondent. The decree was pronounced on the 17th of June, 1868, but was not made absolute, owing to inadvertence or neglect on the part of the petitioner's solicitor, who had undertaken to do all that was necessary in the matter. In the belief that the decree had been made absolute, the petitioner went through a ceremony of marriage with D. S., on the 17th of September, 1871. She afterwards lived with him as his wife and had children by him, and did not discover, until May, 1880, that the decree for the dissolution of her marriage with the respondent had not been made absolute. She now applied to have the decree made absolute. No opposition was offered by the Queen's Proctor, and the Court granted the application.

Alice Ruth Wickham instituted a suit for dissolution of her marriage with her husband, Alfred Colling Wickham, on the ground of his adultery, coupled with cruelty and desertion, and obtained a decree *nisi* on the 17th of June, 1868. The petitioner was present in Court when the decree was pronounced, and she knew that it would be necessary to have the decree made absolute to complete the divorce for which she had prayed in her petition. Her solicitor (since deceased)

*Wickham v. Wickham, Div.*

told her, however, on the day the decree *nisi* was pronounced, that her attendance would not be again required; that the making the decree *nisi* absolute was a matter of form, and that he would attend to it. There was no appearance or intervention by the Queen's Proctor or any member of the public in opposition to the decree, but owing to neglect or inadvertence on the part of the solicitor, who it appeared conducted his business in a very loose and irregular manner, and who died by his own hand, the decree was not made absolute. In the belief that all things necessary in the case had been done, and that the decree *nisi* had been made absolute, the petitioner, on the 17th of September, 1871, went through a ceremony of marriage with one Daniel Smiley, at the Registry Office, Burnley, in Lancashire, in her maiden name of Rodriguez, which she considered was the right name for her to assume on her supposed divorce from her first husband, Alfred Colling Wickham. She lived with Smiley as his wife, and had a family of three children by him. She did not become aware until the 8th of May, 1880, that the decree *nisi* pronounced on the 16th of June, 1868, for dissolution of her marriage with Alfred Colling Wickham, had not been made absolute, and that her marriage consequently with Smiley was invalid. These averments were proved by her affidavit.

*Searle*, for the petitioner, moved the Court, on the 1st of June, to make the decree absolute. He was instructed to ask that the decree might operate from the time at which in due course it should have been made absolute; but it was not in the power of the Court to make it retrospective.

THE PRESIDENT (SIR JAMES HANNEN).—That cannot be done. If the facts should remain unaltered, I shall make the decree absolute; but I think there should be an intervention by the Queen's Proctor.

*Searle*, on the 8th of June, renewed the application.

*Gorst*, for the Queen's Proctor, said

that under the circumstances there was no desire to offer any opposition to the decree being made absolute. The Attorney-General, however, thought it right that the attention of suitors should be drawn to the danger which they incurred in neglecting to have the decrees obtained by them made absolute.

THE PRESIDENT.—I quite agree in what the learned counsel has said on the part of the Attorney-General. No opposition being offered in the case, I am happy to be able to act upon my first impression, and shall make the decree absolute.

Solicitors for petitioner—H. C. Coote; the Queen's Proctor.

ADMIRALTY. }  
1880.  
April 18.

THE SAVERNAKE.

*Practice—Collision—Both Ships to blame—Costs of Reference.*

*At the hearing of an action of damage in which there was a claim and a counter-claim by the two ships, the Court found both ships to blame, and condemned each ship in a moiety of the damage sustained by the other. The question of damage was referred to the Registrar and merchants, and no order was made as to costs. Afterwards the defendant ship brought its counter-claim into the registry, and less than one-ninth of the amount claimed in the counter-claim was struck off, and no mention was made in the report as to the costs of the reference:—Held, that the owners of the plaintiff ship must pay the costs of and incident to this reference.*

This was an action of damage instituted on behalf of the owners of the steamship *Vesuvius* against the steamship *Savernake*. The owners of the *Savernake* defended the suit, and claimed damages by way of counter-claim against the owners of the *Vesuvius*, and on the 24th of July, 1876, the Court pronounced that both vessels were to blame for the collision in respect

*The Savernake, Adm.*

of which the action was brought, condemned the owners of each in a moiety of the losses and damages sustained by the other, referred the question of damages to the registrar and merchants, and made no order as to costs. In November, 1876, the owners of the *Savernake* commenced proceedings in the Chancery Division for the purpose of having their liability for the damage to the *Vesuvius* and her cargo in consequence of the collision limited under the Merchant Shipping Act, 1862, s. 54, and on the 29th of December, 1877, paid into Court in that action, 5,212l. 0s. 5d., being 8l. per ton on the tonnage of the *Savernake*, together with interest.

On the 8th of May, 1877, the Judge of the Admiralty Division stayed all proceedings in the action in this Division, pending the decision of the action for limitation of liability, in which, on the 25th of June, 1877, judgment was given by which a declaration of limitation of liability of the owners of the *Savernake* as claimed by them was made and enquiries were directed that the amount paid into Court might be distributed among the persons entitled thereto.

By an order of the Master of the Rolls made in the limitation action on the 19th of July, 1877, it was declared, *inter alia*, that the owners of the *Vesuvius* were entitled to prove for the moiety of the loss and damage sustained by them, less a moiety of the loss and damage sustained by the owners of the *Savernake*, and that the enquiries directed for the purpose of the distribution of the amount paid into Court should stand over till the loss or damages in respect of which the owners of the *Savernake* were liable had been assessed in the Admiralty Division.

So much of the last-mentioned order as declared that the owners of the *Vesuvius* were entitled to prove for the moiety of the loss and damages sustained by them, less a moiety of the damage sustained by the owners of the *Savernake*, was reversed by the Court of Appeal on the 22nd of March, 1879, and that Court declared that the owners of the *Vesuvius* were entitled to prove against the fund in Court for the amount of one moiety of the loss or damage suffered by their ves-

sel in the collision, and that the amount for which they were so entitled to prove should be ascertained in the Admiralty Registry as directed by the order of the Judge made on the 24th of July, 1876. See *Chapman v. The Royal Netherlands Steam Navigation Company* (1).

On the 22nd of July, 1879, the owners of the *Savernake* brought their counter-claim in to the registry, amounting to 957l. 6s. No tender was made by the owners of the *Vesuvius*, and on the 10th of November, 1879, the registrar reported that there was due to the owners of the *Savernake* the sum of 848l. 13s., with interest, but made no mention of the costs of the reference.

*Myburgh*, for the owners of the *Savernake*, moved to condemn the owners of the *Vesuvius* in the costs of and incident to the reference. He argued that the Court has a discretion as to the way in which the costs of the reference are to be borne, and it is now settled that that discretion must be exercised without reference to the judgment pronounced at the hearing of the action, and solely according to the result of the reference. He referred to *The Consett* (2). In the present case the counter-claim brought by the owners of the *Savernake* was not exorbitant, and no tender was made by the *Vesuvius*.

*Clarkson, contra.*

SIR ROBERT PHILLIMORE.—In this case I must follow the decision of the Court of Appeal in the case of *The Consett* (2). The application will, therefore, be granted, with costs.

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Solicitors—Fritchard & Son, for the owners of the *Vesuvius*; T. Cooper & Co., for the owners of the *Savernake*.

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(1) 48 Law J. Rep. Chanc. (App.) 449; Law Rep. 4 P. D. 157.

(2) *Ante*, p. 24; affirmed on appeal; Law Rep. 5 P. D. 77.

ADMIRALTY. }  
1880. } THE ALHAMBRA.  
July 14, 15, 16. }

*Breach of Contract—Charter-party and Bill of Lading—Safe Port.*

*When it is agreed by a charter-party that a ship shall proceed to a safe port, or so near thereto as she can safely get, the master is bound, if ordered to a port which can only be entered by first discharging part of the cargo, to allow such an amount as may be necessary to be taken out, and then to enter the port, if the lighterage can be done in a place and under circumstances which will not expose the vessel to danger.*

This was an action for breach of contract against the ship *Alhambra*, under the circumstances set out in the judgment.

It was proved, that in order to enable the *Alhambra* to get within the harbour of Lowestoft (to which she was ordered by the consignee of the cargo) from the roads, 419 tons of cargo out of a total of 639 tons, must be taken out into lighters in the roads. It was further proved that large ships of the draught of the *Alhambra*—namely, sixteen and a-half feet, generally took the ground inside the harbour; and from the evidence of one of the plaintiffs it appeared that in some cases, at any rate, in which ships of the draught of the *Alhambra* had entered Lowestoft, this port had been expressly named in the charter-party. The plaintiff was also unable to give any distinct instance when, so far as he could remember, Lowestoft had not been named, though it might not have been.

*Milward and Aspinall*, for the plaintiffs.  
*Butt and Clarkson*, for the defendants.

*Milward*, for the plaintiffs, argued that where there is a roadstead in which a vessel can be lightened, this is a safe port, within the meaning of a charter-party—*Ogden v. Graham* (1). He also relied on *Parker v. Winlow* (2), *Bastifell v. Lloyd* (3), *Schilizzi v. Derry* (4), *Brereton*

*v. Chapman* (5), *Gibson v. Hillstrom* (6), *Capper v. Wallace* (7), *Hayton v. Irwin* (8).

*Butt*, for the defendants, argued that a safe port must mean one in which a vessel such as the *Alhambra* could always lie and discharge afloat at all times of the tide. The question of the custom of the port cannot be imported into the decision of the case. In most of the cases cited on behalf of the plaintiffs, a particular port was named, which distinguished them from this case. The later authorities show that a master is bound to take his ship into a port if the lighterage is reasonable; in the present case 419 tons would have had to be taken from the *Alhambra* to reduce her four feet, and this would not have been a reasonable amount, as the whole cargo only consisted of 639 tons.

*Milward*, in reply.

*Our. adv. vult.*

SIR R. J. PHILLIMORE.—As this is the first case of the kind which has come before this Court, I have taken a few days to consider my judgment upon it. The *Alhambra*, a Norwegian barque, of the burthen of about 467 tons, was chartered at Baltimore, in the United States of America, to go from that place to Queens-town or Falmouth for orders, and thence to a safe port in the United Kingdom, or central ports on the Continent, or as near thereunto as she could safely get, and always lay and discharge afloat. It was provided also, among other things, that lighterage (if any) should be always at the risk and expense of the cargo. The cargo consisted of Indian corn in bulk, and in ship's bags. The ship sailed to Falmouth, at which port she arrived on the 5th day of January, 1880. On the same day the cargo was sold by Borrowman & Co., who had bought it, to Messrs. Everett, to whom the bills of lading were duly endorsed. No port was mentioned in the charter-party, but Messrs. Everett

(5) 7 Bing. 559.

(6) 3 Asp. Mar. Cas. 302; 8 Sess. Cas.; *sub nom. Hillstrom v. Gibson*.

(7) 49 Law J. Rep. Q.B. 350; Law Rep. 5 Q.B. D. 163.

(8) Law Rep. 5 C.P. D. 130.

(1) B. & S. 773; 31 Law J. Rep. Q.B. 26.

(2) 7 E. & B. 942; 27 Law J. Rep. Q.B. 49.

(3) 1 Hurl. & C. 388; 31 Law J. Rep. Exch. 413.

(4) 4 E. & B. 873; 24 Law J. Rep. Q.B. 193.

*The Alhambra, Adm.*

& Co. gave orders to the master of the *Alhambra* to proceed to Lowestoft, and there discharge the cargo.

"Falmouth, 5th January, 1880.

"Captain Cornelinssen, of the

*Alhambra*, Falmouth.

"Sir,—We have just received a communication by telegraph, of which the following is a copy:—

"From Borrowman, Phillips & Co., London, to G. C. Fox & Co., Falmouth. Please order *Alhambra*, with maize from Baltimore, to proceed to Lowestoft. We repeat *Alhambra* to Lowestoft for discharge."

"Yours respectfully,

"W. G. C. Fox & Co.

"Anderson C. Wilson."

Fox & Co. were the agents of Borrowman & Co. This was followed up by a letter the next day, the 6th of January.

"Falmouth, 6th January, 1880.

"Captain Cornelinssen, of the

*Alhambra*, Falmouth.

"Sir,—We have just received a communication by telegraph, of which the following is a copy:—

"From Borrowman, Phillips & Co., London, to G. C. Fox & Co., Falmouth. Insist upon *Alhambra* proceeding to Lowestoft for discharge. Give captain notice owners of cargo will hold him responsible for any and all losses incurred by his delay."

"Yours respectfully,

"G. C. Fox & Co.

"Anderson C. Wilson."

On the same day the captain of the *Alhambra* telegraphed to the harbour-master at Lowestoft, and received answer. Copy telegram:—

"Falmouth.

"Lowestoft, 6th January, 1880.

"From Cornelinssen to harbour-master.

"What draught water can safely—always afloat—discharge Lowestoft.—Please answer. Reply paid. Address Fox & Co."

"Lowestoft, January 6th, 1880.

"From Captain Massingham, harbour-master, Lowestoft, to Cornelinssen, Fox & Co., Falmouth.

"Your message—sixteen feet average high water, eleven low—soft muddy bottom—never known vessel take harm in Lowestoft harbour."

On the 6th of January also, the captain telegraphed to Borrowman & Co., as follows. Copy of telegram:—

"6th January, 1880.

"Borrowman, Phillips & Co, 41 Seething Lane, London.

"If you will give solid guarantee against all consequences, I will proceed to Lowestoft Roads; if not, I will protest against your order, and proceed to Harwich, if you cannot give me another safe discharging place, more convenient for you to receive my cargo, according to charter-party. Telegraph reply.

"Cornelinssen, of *Alhambra*."

Of the proposal for a guarantee, I think, no notice was taken by Borrowman & Co., who were quite justified in refusing to enter into a new contract, which this would have been, and in abiding by the contract already made.

On the 20th of January the plaintiffs, Everett & Co., sent the following letter to the captain of the *Alhambra*. Copy:—

"To Captain H. Cornelinssen, of the barque *Alhambra*, of Lanwig, Norway, and lying in Harwich harbour.

"Sir,—Take notice, that I am the consignee of the cargo of maize, and laden on board your vessel, and require you forthwith to proceed to Lowestoft, and deliver such cargo to me there, according to the terms of the charter-party and bill of lading. And take further notice, that I am prepared to pay freight, as provided by the charter-party, and at my own expense to lighten your vessel in Lowestoft Roads, sufficiently to enable her to lie always afloat in Lowestoft harbour, if necessary, should the draught of water so require.

"Dated this 30th day of January, 1880.

"Everett & Son.

"W. S. Everett."

The captain went on to Harwich, and there discharged his cargo. The plaintiffs, Everett & Son, wrote as follows. Copy:—

*The Alhambra, Adm.*

"To Captain H. Cornelinassen, of the barque *Alhambra*, of Lanwig, Norway, now lying in Harwich harbour.

"Sir,—Take notice, that I receive the cargo laden on board your vessel, and consigned to me at Lowestoft, under protest, in Harwich harbour, reserving my right to proceed against you to recover the damages which I have sustained, and may sustain, in consequence of your refusing to proceed to Lowestoft, and there deliver such cargo, according to the terms of your charter-party.

"Dated this 20th day of January, 1880.

"W. Everett & Sons,

"For W. S. Everett."

On this state of facts, the plaintiffs claim damages for a breach of contract. The defendants maintain that there was no breach of contract, inasmuch as Lowestoft was not a safe place of discharge for the *Alhambra*, and that Harwich was the nearest safe port in which the cargo could be discharged. It appears that the *Alhambra* drew sixteen feet six inches of water when laden, eight or nine feet without a cargo, eleven and a half feet in ballast. Lowestoft Roads afford a safe and good discharge, sheltered from all winds but S.S.W. Tansley, a pilot, resident at Lowestoft, said he had sometimes seen 200 sail in these roads. When the cargo was lightered down to twelve feet, the *Alhambra* could go inside the harbour. From high water to low six hours intervened. The discharge into lighters appears to be usual. On Monday, the 19th of January, the day on which the *Alhambra* arrived off Lowestoft, the morning high water was 17 feet, evening water 15 feet 6 inches, low water, 11 feet 6 inches. On January 20th, at high water in the morning, there were 16 feet 9 inches over the bar, evening tide 16 feet 3 inches; at low water, morning, 12 feet 9 inches, and 13 feet 3 inches evening. On Wednesday, the 21st of January, there were 17 feet 6 inches, morning tide; so that it would appear that in the morning tide of the 19th and 21st the *Alhambra* might have entered, if not wholly without lightering, with very little. In the evening the tide was 15 feet 6 inches, low water 13 feet 6 inches, so that by a reduction

on lightering of the cargo by three feet the *Alhambra* could have entered at low tide on that day (9).

The vessels that entered when there was a depth of sixteen feet of water, did usually take the ground, but there was a soft mud bottom, and the evidence is that no injury was ever done to vessels entering. The general custom certainly is for vessels to lighter in the road and then go into port. It appears that the *Alhambra* sailed for Lowestoft on the 15th of January, and on the 19th sighted that place, and took a pilot on board when abreast of Lowestoft, about five or six miles off. The captain never went nearer to Lowestoft or ascertained by personal inspection the state of the port. This pilot has not been examined, but it would seem that the captain sailed with him some distance, and then took a Harwich pilot on board and went to Harwich.

It is contended by the defendants, first, that this is not a safe port within the meaning of the charter-party, where the ship can lie and discharge afloat; secondly, that the *Alhambra* was not bound to discharge in the roadstead, in order to make her enter the port, to the extent that the evidence shews that she must have done in this case. Various cases were cited by counsel, but the law as applicable to this case now before me appears to be laid down in the following judgments. In *Schilizzi v. Derry* (4) the defendant had contracted by charter-party that his ship, then in London, should sail to Galatz or

(9) I was furnished with the following abstract from the log of the harbour-master:—

Winds.		H.W.		L.W.	
			ft. in.		ft. in.
Morning.	E.S.E. 4	Mon. Jan. 19; the day	17		11 6
Evening.		on which the <i>Alhambra</i> arrived off Lowestoft .....			
	3		15 6		11 6
N.W.	4	Tues. Jan. 20 .....	16 9		12 9
W.N.W.	4		16 3		13 3
W.N.W.	3	Wed. Jan. 21 .....	17 6		
N.W.	3		15 6		13 6
N.W.	4	Thurs. Jan. 22 .....	16 3		14
N.	5		17 3		13 6
N.N.E.	3	Fri. Jan. 23 .....	16		12 9
N.N.E.	3		16 6		12 9
N.N.W.	3	Sat. Jan. 24 .....	16		12 9
N.N.W.	3		16 3		12 9

*The Alhambra, Adm.*

Ibrail, or so near thereunto as she might safely get, and there load a cargo from plaintiffs' factor, and therewith proceed to a port in the United Kingdom, unless prevented by the causes usually excepted. The ship arrived at the mouth of the Danube on the 5th of November, and found not enough water to cross the bar. It was not safe for her to remain off the mouth later than the 11th of December, and on that day she proceeded to Odessa, and took in a cargo from other parties. After the 7th of the following January there was enough water to enable the ship to cross the bar and sail to Galatz. Lord Chief Justice Campbell said, "I am really unable to entertain any doubt of the plaintiffs being able to recover. As to the first plea, the meaning of the charter-party must be that the vessel is to get within the bounds of the port, though she may not reach the actual harbour. Now, could it be said that the vessel, if she was obstructed in entering the Dardanelles, had completed her voyage to Galatz? There can, therefore, be no doubt as to the first issue. Then, as to the second issue, were the defendants prevented by dangers and accidents of the seas from completing the voyage? Clearly not. For, though from the 5th of November to the 7th of January the vessel could not cross the bar at the Sulina mouth of the Danube, yet she might have done so after the 7th of January, and would then have reached her port of destination." Mr. Justice Crompton said, "I cannot see any doubt. Here is a positive contract to proceed to a port unless prevented by dangers and accidents of the seas, &c. That must mean prevented from doing so at all: it would be most dangerous to hold that temporary obstruction puts an end to the obligation." The case of *Bastifell v. Lloyd* (3) was an action on a charter-party, by which the plaintiffs' ship, *Bebec*, should go to Llanelly and take on board a cargo of culm, and being so loaded should therewith proceed with all convenient speed to Cole's wharf, Rochester, or so near thereunto as she might safely get, and deliver the same on being paid freight, &c.

The ship arrived with the cargo at

Rochester on the 24th of October, and was moored at the buoys about 500 yards from and opposite Cole's wharf. On the 25th of October the master gave the defendants' agent notice that the vessel was ready to discharge her cargo, and he desired the master to come alongside Cole's wharf. At that time there was not sufficient water for the vessel to come alongside the wharf, and the agent refused to send lighters to receive part of the cargo so as to lighten the vessel and enable her to come alongside the wharf; the state of the tide did not allow the vessel to be removed to Cole's wharf until the 4th of November, and on the following day she commenced discharging her cargo. In an action for demurrage it was holden that the master was bound to take the vessel alongside Cole's wharf. Lord Justice Bramwell, who was one of the Judges who heard the argument, said, "I cannot help thinking that the defendant is right when he says that the vessel was bound to go alongside the wharf; as pointed out by the Lord Chief Baron, the object of the charterer was to save the expense of lighterage. Suppose the shipowner found that he could not get alongside the wharf for two or three days, when the tide would rise high, he would clearly have been bound to wait, since he could then safely get there. He has undertaken to go alongside Cole's wharf, unless the want of safety renders it necessary that he should stop short of that place. It is admitted that by waiting a short time he not only could but did get there. It might be different if there were only one or two tides in the year which would enable the vessel to reach the wharf, but it is not necessary to say what the master ought to do in that case. As it is, convenience and common sense are in favour of the defendant." In the Scotch case of *Gibson v. Hillstrom* (6), which is considered, I believe, the leading case on this question, the master had become bound under his charter-party to proceed to Glasgow, or as near thereunto as the ship might safely get and lie afloat at all times of tide. On arriving at a point off Greenock known as the tail of the bank, it was found that she could not with her full cargo lie afloat in Glasgow

*The Alhambra, Adm.*

harbour at all times of tide. The consignee, who was at hand, requested the master to discharge what was necessary to lighten the ship, i.e. one-fifth of the cargo, and to proceed with the residue to Glasgow. The majority of the Court held that this was a reasonable request, that it was in the course of the master's duty to proceed with the residue of the cargo to Glasgow, and that he could not claim demurrage for the time taken in reaching that port. Lord Kinlock, in delivering his judgment says, "I think the words 'As she may safely get,' are reasonable to be construed to mean, 'As it is possible to take her with safety;' and this possibility must be considered with reference to the due and usual method of accomplishing such safety. If the obstacle to her proceeding is a bar at the mouth of the harbour which a slight lightening would enable her to surmount, I cannot think that the master would be entitled to refuse the lightening, and to insist on delivering the whole cargo in the open sea." The proceeding at the tail of the bank—that is, the unloading of one-fifth of the cargo—was not in any sound sense a delivery of the cargo, it was lightening for the purposes of navigation. Had the proposal been to take out four-fifths of the cargo at the tail of the bank, and to go on with the remaining one-fifth, the ship-master's argument would have had a great deal more of plausibility, for in such a case a great deal may depend on the difference of more or less it may draw, that very distinction between lightening and discharging the ship which is all important in the case."

In the case of *Nelson v. Dhal* (10), where there was a provision in the charter-party that the ship should be brought to a particular place, or as near thereunto as she might safely get, it was laid down (p. 598) "that in such a contract it must be considered whether the obstruction to the ship entering the docks was of temporary or permanent nature, that an obstruction must be considered a permanent one which cannot be removed in a time which is reasonable, having regard to the interests of the shipowner and the consignee."

(10) Law Rep. 12, Ch. D. p. 562.

This doctrine as to a temporary obstacle not being a sufficient impediment to the execution of the contract was applied to the case of over-draught of a vessel in the following case: In *Copper & Co. v. Wallace Brothers* (7) it was agreed by charter-party that a ship was to take in a full cargo at Bombay, and proceed therewith to a safe port on the Continent between Havre and Hamburgh, as ordered, "or as near thereunto as she might safely get." The cargo was to be brought to and taken from alongside at merchants' risk and expense. The ship was ordered by the charterers to Koogerpolder, in Holland. Koogerpolder is some way up a canal, and the ship with her full cargo drew too much water to proceed up the canal. No arrangements had been made by the charterers or consignees for taking delivery of any part of the cargo at the mouth of the canal. At least one-third of the cargo had to be unloaded in order to enable the ship to proceed up the canal, and this was done. The plaintiffs claimed the pilotage, harbour dues and other expenses of going into port, as well as demurrage, but afterwards consented to accept what it would have cost to lighten the whole.

Mr. Justice Lush, sitting with Mr. Justice Manisty, in delivering the judgment said, "It cannot, we think, be laid down as an inflexible rule that when a ship has got as near to the port as she can get, and the only impediment to proceeding further is over-draught, the master is, under all circumstances, entitled to consider the voyage at an end. He is bound to use all reasonable means to reach the port. The words 'as near thereunto as she can safely get' must receive a reasonable and not a literal application. The over-draught may be such, and the cargo so easily dealt with, that the surplus may be removed and the ship sufficiently lightened without exposing her to extra risk or the owner to any prejudice, and without substantially breaking the continuity of the voyage; and in such case, if the consignee is at hand to receive the over-draught, as he was in the case before us, we are of opinion that it would be the duty of the master to lighten the ship and proceed to the

*The Alhambra, Adm.*

port. This is the principle laid down by the Court of Sessions in the case of *Gibson v. Hillstrom* (6)."

Applying the principles of law enunciated in these decisions to the facts and circumstances of the case before me, I am of opinion that the breach of contract alleged by the plaintiffs is established, and that the defendants must pay the damages consequent upon such breach.

Solicitors—H. C. Coote, agents for C. Diver, Great Yarmouth, for plaintiffs; Hughes, Hooker, Buttanshaw & Thunder, for defendants.

PROBATE. }  
1880. } *In the goods of DOST ALY KHAN*  
May 25. } (deceased).  
June 1. }

*Will of Persian Subject made in Persia—Decree of Persian Court, certifying that Eldest Son of Testator was the Party entitled under the Will to the Property possessed by Deceased in this Country—Administration (limited) with Decree annexed.*

*A., a native of and domiciled in Persia, made and duly executed his will according to Persian law.*

*By the law of Persia, which does not recognise the principle of representation of the estate of a deceased person, his will, as well as all his property, is taken possession of by the Court having exclusive jurisdiction in matters of wills, inheritance and succession. This Court is composed of ecclesiastics called "Moojateheds." It is presided over by one of the body, styled the "Superior Religious Head and Highest Authority," and his decrees are irrevocable. Neither the original nor any copy of the will is allowed to go out of the possession of the Court. The contents of the will are published by the Court in the presence of the persons (legatees and heirs) interested in the property of the deceased, and a document is given to each, certifying the portion of the property to which he is entitled.*

*The testator died possessed of certain property (funds standing in his name in the books of the Bank of England), and this property was appointed to B., his eldest son, by the "Superior Religious Head," who gave*

*a document under his hand and seal certifying that fact:—*

*The Court granted to the duly appointed attorney of B. letters of administration (with the decree of the Persian Court annexed), limited to the property specified in the said decree.*

Dost Aly Khan, late Minister of Finance to His Imperial Majesty the Shah of Persia, died on the 29th day of March, 1873, at Teheran, in Persia. He left three children, of whom Dost Mahomed Khan was one. The Dost Mahomed Khan (his eldest son) was also son-in-law of the Shah, having married his daughter. The said Dost Aly Khan left a will which according to Persian law was well made.

By the law of Persia a Persian cannot dispose by will of more than a third of the residue of all his property after payment thereof for debts, funeral expenses and charitable purposes, the remaining two-thirds of such residue must be divided among the heirs and in the shares respectively specified in the written law called the "Sharâ," which is entirely based on the Koran. The will, which is intimately connected with religious matters, as well as all the property of the deceased, is, in accordance with the "Sharâ," taken possession of by the Court having exclusive jurisdiction in matters of wills, inheritance and succession. This Court is presided over by a class of learned ecclesiastics, called Moojateheds, of whom one is the "Superior Religious Head and the Highest Authority" in all Persia in respect of the said matters, and whose decrees are absolutely irrevocable.

According to the "Sharâ" neither the original nor any copy of the will is allowed to go out of the possession of the Court, nor are the contents of such will published by the Court except to and in the presence of the persons (legatees and heirs) interested, according to the "Sharâ," in the property of the deceased.

In this case the said "Superior Religious Head" had distributed and divided all the property of the deceased among and in the presence of his legatees and

*In the goods of Dost Aly Khan, Prob.*

heirs, and had in conformity with the "Sharâ" given a document under his hand and seal to each of the persons so interested, specifying the particular part of the property of the deceased apportioned to such person. The said Superior Religious Head had appointed to the said Dost Mahomed Khan certain property of the deceased (funds standing in his name in the books of the Bank of England) which was at his death and still is in England, and had given a document marked "A" under his hand and seal certifying that fact.

There is nothing analogous to probate or administration known in Persia except the documents so given to each of the legatees and heirs by a Moojatehed under his hand and seal specifying as above-mentioned. Such document is sufficient, and the only evidence which is required or obtained for all purposes in Persia, to prove the title of the person therein mentioned to the property apportioned to him, and to take all proceedings necessary to get possession of all property therein mentioned.

The document "A" was under the hand and seal of the said Superior Religious Head. The Minister for Foreign Affairs to His Majesty the Shah had certified in the document under his hand and seal that the person whose decree the said document purported to be was then such Supreme Religious Head and Highest Authority in the empire, and the British Minister at the Court of Teheran, had, under his hand and the seal of the British Legation, verified the signature and seal of the Foreign Minister.

A translation marked "B" of paper "A" ran as follows: "Let it be known that the whole and entire amount of the money which the late Dost Aly Khan Nizamed Dolé deposited in the bank, whatever sum it may be, both capital and interest, is the undoubted right and real and special property of and belongs solely and entirely to His Excellency Dost Mahomed Khan Moayeral Menalik, and no one else of the heirs has any right whatever thereto. All the other heirs have compromised all the rights that they may have had on the said amount of money as well as on all other property

that has been left by the late Nizamed Dolé to His Excellency Dost Mahomed Khan, for a certain sum of money which they have received. It therefore rests solely with him to take legal possession of the property in any way and whenever he thinks proper. Written in Teheran," &c. &c.

The above averments were proved by the affidavits of His Excellency General Neriman Khan, a Persian by birth, but professing the Christian religion, and Minister of His Imperial Majesty the Shah of Persia at the Court of Vienna, and of Mirza Aly, also a Persian by birth, and a Mussulman, second Secretary to the Persian Embassy at the Court of St. James.

*Dr. Deane* (with him *Gazdar*), moved the Court to decree letters of administration of the personal estate and effects of the said deceased mentioned in the decree of the Persian Court (with or without the said document "A" annexed) to the duly constituted attorney for the purpose of Dost Mahomed Khan.

[THE PRESIDENT (SIR JAMES HANNEN).—Our theory of law is that the personal estate of a deceased person must be represented by some one, and it is through the execution or administration that the title is derived. But with regard to real estate it is not so. It goes directly from the deceased person to the heir. It appears to me that the Persian law is to that effect in the case of personal estate, namely, that the intervention of a representative is not required, but that by the decree of a competent authority it is declared that such and such portion of the property which belonged to the deceased, has now become the property of the person designated. That has the effect of excluding all idea of probate or administration.]

*Dr. Deane*.—The Bank of England may not be disposed to part with this property unless it has the sanction of this Court, which deals with the property of deceased persons.

[THE PRESIDENT (SIR JAMES HANNEN).—Yes, but this Court does not sit here to make a title or give security to the Bank of England, but only to administer

*In the goods of Dost Aly Khan, Prob.*

the law with relation to deceased persons' estates.]

*Dr. Deane* submitted that the Court would not be going beyond its usual practice to proceed upon the decree of the Court of the domicile of the applicant, and to make on that decree a grant of administration to the attorney of the party entitled to the whole of the property of the deceased in this country. He referred to *In the goods of Sidy Hamet Benamor Beggia* (1).

THE PRESIDENT (SIR JAMES HANNEN).—In that case the course was made clear for the Court here by the fact that administration had been granted by the Court of Gibraltar. With regard to the proof of the Persian law, the evidence does not quite come up to our view of that of an expert, and the matter must be cleared up by further affidavits.

*Our. adv. vult.*

A further affidavit by General Neriman was filed. It stated—First: "In Persia there are neither barristers, solicitors, advocates, nor any other kind of professional lawyers, and the Persian language has not even any equivalent for any of those names. In Persia itself the administration of the law is left entirely to the ecclesiastics, who perform and pronounce all judicial acts and decrees. It is, however, contrary to their faith to take an oath—and it is impossible to get any evidence on oath from any of these ecclesiastics."

Second: "Although the administration of the law is thus left in Persia entirely to the ecclesiastics, the study and consequent knowledge of the law of Persia is required of all subjects of Persia who enter the diplomatic service of His Majesty the Shah, and aspire to fill any of the higher posts in such service; and such persons before they are appointed to such posts are required to be thoroughly acquainted with and qualified to administer and execute that law out of Persia."

Third: "For this reason I have studied Persian law, and am well acquainted with it. I acted as Persian Consul-General

at Cairo, in Egypt, during the years 1869, 1870 and 1871, and during those three years it was my duty to, and I did, in fact, administer Persian law in connection with the subjects of His Majesty the Shah, who were for the time being residing in Egypt," &c. &c.

There was also an affidavit to a like effect by *Mirza Aly*.

THE PRESIDENT (SIR JAMES HANNEN) (on June 1).—In this case the affidavit which has been brought in since the application was made satisfies me that the gentleman who deposed to the Persian law was and is, from the position he has occupied, competent to give evidence to the Court upon that subject. I therefore accept his statement of the law, and it appears to me that the result is this: By the law of Persia representation of the estate of a deceased person is not recognised, but the person entitled beneficially to the property of the deceased takes directly from him, though by the decree of the competent Court. In this particular instance the competent Court has declared that the present applicant is entitled to certain funds which are deposited in the Bank of England. It appears to me that the way in which I shall carry out that which is necessary according to the English law with reference to the Persian law, will be by directing that administration be granted to the applicant limited to the property which is referred to in document "B," which is stated to be a translation of the decree of the Persian Judge. I, however, call attention to the fact that this particular document which I have now before me, and which is marked "B," is not fully authenticated as a translation of the sentence of the Persian Court. That will have to be done in the Registry. I am assuming for the purpose of my decision that it is a correct translation, and I say, therefore, that administration will be granted to the applicant limited to the property which is referred to in that document.

Solicitors—*Freshfields & Williams.*

## [IN THE COURT OF APPEAL.]

JAMES, L.J.  
BAGGALLAY, L.J.  
BRAMWELL, L.J. } THE CITY OF MANCHESTER.  
1880.  
April 23.

*Costs—Collision—Cargo—Damages.*

*The case of "The Milan" does not lay down any general rule that wherever owners of cargo succeed in an action brought by them to recover damages for the loss of or injury to the cargo, they are entitled to the whole costs of the litigation.*

*"The circumstances of each particular case must introduce a variation in the way the costs are given," per BAGGALLAY, L.J.*

This was an appeal by the defendant from a decision of Sir R. Phillimore in an action brought by the owners of cargo lately on board the *Moselle* against the owners of the *City of Manchester*, in which his Lordship had pronounced both ships to blame, that the plaintiffs were accordingly entitled to recover half their damages, but following the precedent of the case of *The Milan* (1), had given the plaintiffs the whole of their costs. The case upon the question of costs is reported 48 Law J. Rep. Adm. 70.

*Butt and Clarkson*, for the appellants.

*Phillimore and Stubbs*, for the cargo owners, the plaintiffs.

Their Lordships affirmed the judgment on the facts.

The appeal was then opened against the order as to costs which had been made May 20, 1879, on a different day from that on which the main judgment in the case was given (April 25, 1879).

*Phillimore* objected that the order of May 20 was an interlocutory order, and that the appeal was too late, and, second, that the appeal was improper, as being an appeal as to costs which were in the discretion of the Judge—*The Onsett* (2). The latter objection was, however, waived, and the Court overruled the first objection, holding that the order as to costs

was really part of the original decree, and allowed the appeal to proceed.

The arguments and authorities cited were the same as in the Court below.

JAMES, L.J.—I am of opinion in this case that the order as to costs is really part of the decree. Although it was made at a subsequent date, it was as if made on the date of the decree, otherwise there would be no right in the Court, after the matter was disposed of, to make a separate order for the costs of the litigation. The litigation ended in final judgment, and therefore that order, having been made a month after, could only be sustainable as completing the decree, and that order ought to be part of it. Therefore, it appears to me, there is no foundation for the objection that it is an interlocutory order for costs—an order coming within the principle of the rule applicable to appeals from interlocutory orders.

Then, with regard to the costs, the learned Judge below did not deal with the costs as a matter in which he was exercising his judicial discretion. He was dealing with them as laying down the universal rule as established in *The Milan* (1), that wherever the owners of cargo succeed, they are entitled to the whole costs of the litigation. Now I cannot agree with that as a general rule. It seems to me that to do so would be to encourage unnecessary litigation. The owners of the cargo in this case embarked in litigation, in which they aver, in the most positive terms, not only that the original defendant was to blame, but they aver and take upon themselves to prove that their ship, which was then carrying their goods, was totally free from blame. There were two distinct issues raised. The question raised was, whether one was to blame solely, or whether the other was solely to blame, and it seems to me probable, looking at the evidence before us, that the greater part of the evidence was occasioned by that contention on which the plaintiffs failed, because they failed upon the question of misconduct, the Court below having found two acts of misconduct against the one, and only one act of misconduct against the other side. It seems to me

(1) Lush. 388; 31 Law J. Rep. Adm. 105.

(2) 42 Law J. Rep. Adm. 34.

*The City of Manchester (App.), Adm.*

it would be very unjust to fix the party who has simply failed in the litigation with the whole of the costs of the litigation. I think if there were no fixed rule that there were to be no costs, the Court would deal in this case as in any other case before it, and make the costs of the litigation follow the event. What I mean by "follow the event," is the decision at the time of the hearing, except the extent to which the Court might think fit to vary it, having regard to the question of either of the parties to the litigation wilfully or intentionally increasing the costs.

BAGGALLAY, L.J.—The Judge of the Admiralty Court has given to the plaintiffs the costs of this action, but he has not done so by the exercise of any judicial discretion, but because he considered it right to adhere to the precedent established by the case of *The Milan* (1).

It appears to me to be clear that it is a case of principle involving a question of costs, and properly, therefore, brought under the consideration of the Court of Appeal. As regards the costs of this particular action, if we were called on to exercise the discretion not exercised in the Court below, I think the justice of the case would be met by there being no costs at all. At the same time I do not dare to say that in all cases in which the cargo owner is the plaintiff, he is to be treated in respect of costs in exactly the same way as the plaintiff who was the ship owner. The circumstances of each particular case must introduce a variation in the way in which the costs are given.

BRAMWELL, L.J.—I am of the same opinion. If the learned Judge in this case thought there was a practice of giving costs, I should have doubted whether it was only the exercise of discretion not to deviate from the practice. I understand that Dr. Phillimore consents that we should entertain the question as if permission had been given by the learned Judge below. As to whether the cargo owner should get the whole costs of this litigation—supposing the *City of Manchester* had come and

said, "We admit we ought to have done"—whatever they ought to have done—"but what we do deny is, that you are free from blame as alleged"—so that in the result the Judge had found that which is now found, namely, that considering the admission of the defendant, and that which was brought against the plaintiffs—"you are both to blame"—could it be said that the cargo owner was to recover the whole costs of the litigation? On the contrary, he ought to pay the costs. If in such a case he ought to pay the whole, what is to happen when he half succeeds and half fails? It almost follows to demonstration that he should get half. I can assure Dr. Phillimore that is so in common law, and he might be surprised to hear that a little while ago the learned Judge in a case in which a plaintiff recovered a few shillings, ordered that he should pay all the costs of the action and of the appeal.

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Solicitors—Gellatly & Co., for appellants; Stokes, Saunders & Stokes, for respondents.

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ADMIRALTY. }

1880. }

May 11. }

THE ST. LAWRENCE.

*Necessaries—Bottomry Bond—Priority of Claims—Dock Dues.*

*A person who has advanced money for the purpose of discharging dock dues stands in the same position as the dock company, and his claim ranks with pilotage and towage claims, and has priority over the claim of a holder of a bottomry bond of a previous date.*

This was a motion by the plaintiffs, who had claims against the *St. Lawrence* for necessities, that a sum of 94*l.*, part of the proceeds realised by the sale of the *St. Lawrence*, which had been paid into Court, should be paid out to them.

These claims consisted, among others, of three sums disbursed for the payment of dock dues payable by the *St. Lawrence* on her arrival at Liverpool, for charges

*The St. Lawrence, Adm.*

for reporting her arrival off the port and for the cost of certain necessary telegrams. The application was opposed by the holder of a bottomry bond on the *St. Lawrence* and the owners of the cargo lately laden on board of her.

*Myburgh*, in support of the motion, argued that these claims were on the same footing as those for pilotage and towage, which rank before a bond given before they occurred, since they were necessary for the arrival of the ship, without which the bondholder could not realise his security.

*Clarkson* and *Phillimore*, *contra*.—A man who advances money for such claims as these must be taken to do so at his peril and with the possibility that a bondholder may have prior claims. They relied on *The William F. Safford* (1).

SIR R. J. PHILLIMORE.—In my opinion, these dock dues may be treated, under the circumstances of this case, as if they were pilotage and towage claims, which are acknowledged to rank before previous bottomry claims. These claims were not, it is true, mentioned by Dr. Lushington in his judgment in *The William F. Safford* (1), but it is not disputed that a person who discharges similar claims on ships stands in the shoes of the person to whom the money has been paid. I consider, therefore, that the sum claimed in respect of the money paid to discharge the dock dues must be paid out to the applicants. I cannot, however, extend this principle so as to cover such claims as those for reporting the *St. Lawrence* and despatching telegrams. I therefore reject the application as regards these two items.

Solicitors—Pritchard & Sons, agents for Bateson & Co., Liverpool, for claimant for necessities; Harvey, Alsop & Stevens, Liverpool, for bondholders; Simpson & North, Liverpool, for owners of cargo.

DIVORCE. }  
1880. } BAKER v. BAKER, WHEELER  
June 22. } AND OWEN.

*Suit for Dissolution—Petitioner a Lunatic—Suit instituted by Committee of his Estate.*

*The insanity of the husband or wife is not a bar to a suit on his or her behalf for dissolution of marriage, and such a suit may be instituted by the committee of the estate of the lunatic.*

This was an appeal to the full Court (consisting of Lord Coleridge, the President (Sir James Hannen), and Sir R. J. Phillimore), by the respondent in the suit, against a judgment on demurrer by the President, in which he held that it was competent for the committee of the estate of a lunatic husband to file a petition on his behalf for dissolution of marriage with his wife by reason of her adultery.

*Dr. Deane* (with him *Bayford*), appeared for the respondent in support of the appeal.

*Inderwick* (with him *Searle*), for the petitioner.

The arguments were the same as those adduced in the Court below, and the case will be found reported *ante*, p. 49.

LORD COLERIDGE and SIR R. J. PHILLIMORE held, agreeing with the learned President, that the case was governed by the decision of the House of Lords in *Mordaunt v. Moncrieff* (1), and upheld his judgment.

*Appeal dismissed.*

Solicitors—Thomas White & Sons, agents for E. M. Harwood, Bristol, for petitioner; Surr, Gribble & Bunton, agents for G. W. Derry, Plymouth, for respondent.

(1) Lush. 69.

(1) 43 Law J. Rep. (H.L.) P. & M. 49; Law Rep. 2 Sc. & Div. App. Cas. 374.

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## TO THE REPORTS OF CASES

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**DISSOLUTION OF MARRIAGE**—*decree nisi pronounced: decree not made absolute: re-marriage of petitioner*—The petitioner (the wife) obtained a decree nisi for dissolution of her marriage with the respondent. The decree was pronounced on the 17th of June, 1868, but was not made absolute, owing to inadvertence or neglect on the part of the petitioner's solicitor, who had undertaken to do all that was necessary in the matter. In the belief that the decree had been made absolute, the petitioner went through a ceremony of marriage with D. S., on the 17th of September, 1871. She afterwards lived with him as his wife and had children by him, and did not discover until May, 1880, that the decree for the dissolution of her marriage with the respondent had not been made absolute. She now applied to have the decree made absolute. No opposition was offered by the Queen's Proctor, and the Court granted the application. *Wickham v. Wickham*, 70

—*petitioner a lunatic: suit instituted by committee of his estate*—The insanity of the husband or wife is not a bar to a suit on his or her behalf for dissolution of marriage, and such a suit may be instituted by the committee of the estate of the lunatic. *Baker v. Baker*, 49. Affirmed on Appeal, 83

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petitioner (the wife) filed a petition praying that her marriage with the respondent might be declared null and void:—*Held*, that the *lex loci contractus* should prevail in the matter; and the marriage being valid according to the law of England, the Court dismissed the petition. *Sottomayor (otherwise De Barros) v. De Barros (the Queen's Proctor intervening)*, 1

The Queen's Proctor, when intervening before decree *nisi*, is not precluded from setting up other defences in addition to that of collusion. *Ibid*.

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**PRACTICE—bottomry bond: interest**—The Admiralty Division will not allow larger interest than four per cent. on a bottomry bond, from the date when it becomes payable until the date of payment, even if a larger amount is stipulated for in the bond. *The Sophia Cook*, 16

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— *release of ship: unreasonable objection to bail: costs and damages: security for costs*—When a plaintiff in an action *in rem* arrests a ship, and although substantial bail is offered, refuses to release her, and unreasonably requires an enquiry to be made as to the means of the securities, he will be liable to pay damages and costs for so doing. Security for costs will not necessarily be required from a mate who is a foreigner and a plaintiff in an action for wages. *The Don Ricardo*, 28

— *costs: compulsory pilotage*—When in an action for damages by collision the defendant pleads a defence on the merits and also a plea of compulsory pilotage, and succeeds on the plea of compulsory pilotage only, each party will have to pay his own costs. *The Mathew Cay*, 47

*Semble*, the defendant will be entitled to the costs of the action if there is only a plea of compulsory pilotage and he succeeds upon it. *Ibid*.

— *interrogatories: collision actions*—Interrogatories may be delivered in an action for damage by collision asking for information relative to the collision. *The Biola* overruled. *The Radnorshire*, 48

— *collision: both ships to blame: costs of reference*—At the hearing of an action of damage in which there was a claim and a counter-claim by the two ships, the Court found both ships to blame, and condemned each ship in a moiety of the damage sustained by the other. The question of damage was referred to the registrar and merchants, and no order was made as to costs. Afterwards the defendant ship brought its counter-claim into the registry, and less than one-ninth of the amount claimed in counter-claim was struck off, and no mention was made in the report as to the costs of the reference.—*Held*, that the owners of the plaintiff ship must pay the costs of and incident to this reference. *The Savernake*, 71

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SALVAGE—*distribution of: demurrer: merchant shipping act: equitable and bona fide agreements*—In an action for distribution of salvage, the defendants may plead an agreement by which the plaintiffs have accepted certain sums in respect of the amount of salvage reward due to them respectively. Such a pleading is not demurrable under section 182 of the Merchant Shipping Act, 1854; but the Court will at the hearing consider whether or not it is an equitable agreement and entered into in good faith. *The Afrika*, 63

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SETTLEMENTS—*variation of: no children of marriage: matrimonial causes act, 1878: retrospective operation*—In contemplation of their marriage, a settlement was made by the petitioner on the respondent. There was no issue of the marriage, and a decree nisi for its dissolution, by reason of the respondent's adultery, was pronounced on the 9th of May, 1878, and the decree was made absolute in November of the same year. On the 27th of May, 1878, the Matrimonial Causes Act, 1878 (41 Vict. c. 19), which allows the Court, notwithstanding that there are no children of the marriage, to exercise the powers vested in it by 22 & 23 Vict. c. 61. s. 6, was passed.—*Held*, that the Court

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TESTAMENTARY CAPACITY. See Will.

TOWAGE—*delay: payment of extra sum*—When a contract is entered into to tow a vessel from one point to another for a fixed sum, the tug cannot claim extra remuneration in the nature of payment for towage in respect of a delay which occurs during the transit without any fault on the part of the tug or the tow. *The Hjemettt*, 66

WILL—*testamentary capacity: insane delusions on one particular subject: capacity apart from delusions*—W. S. was subject to insane delusions on one particular subject. Apart from them he appeared to be perfectly rational, managed his affairs with ordinary prudence, and exhibited in various ways considerable mental capacity. His last will was contested by his next-of-kin on the ground that when he executed it he was not of sound mind. The President, in directing the jury, followed the ruling in *Banks v. Goodfellow* (39 Law J. Rep. Q.B. 237; Law Rep. 5 Q.B. 649), in which it was laid down that the mere fact that a testator is subject to insane delusions is no sufficient reason why he should be held to have lost his right to make a will, if the jury are satisfied that the delusions have not affected the general faculties of his mind and cannot have influenced him in any particular disposition of his property. *Smee v. Smee*, 8

— *two wills: executors nominated in first: no executor named in second, or words of revocation: principal legatees the same in both wills: revocation by implication: ambiguity: parol evidence*—Testatrix executed two wills. In the first she appointed executors and disposed of the residue; the second contained no appointment of executors, or words of revocation; in both the principal legatees were the same, and the residue was not specifically disposed of.—*Held*, that there was that amount of ambiguity on the face of the papers as to warrant the admission of parol evidence to ascertain whether the testatrix intended the last paper in substitution for the first, or that both together should constitute her will. *Jenner v. Finch*, 25

— *name of second attesting witness cut off, but piece preserved: probate*—Testator cut from the will the portion of the document on which the name and address of the second attesting witness were written. The excised part was also mutilated, but the name and address of the witness remained legible upon it, and it was found with the will in the testator's writing desk. The Court being satisfied that the name had not been removed *animo revocandi*, decreed probate of the instrument. *In the goods of John Wheeler*, 29

*Semble*, that the names of the attesting witnesses are an essential part of the will, and that their removal from the will *animo revocandi* will render it inoperative. *Ibid*.

**WILL (continued)—executor out of jurisdiction: grant durante absentia**—One of the executors named in the will proved the paper, and then left the country. The second executor named in the will was also out of the jurisdiction. The Court made a grant *durante absentia* to a legatee and also one of the next-of-kin to enable her to become a party to a suit in the Chancery Division for the administration of the estate. *In the goods of Jenkins*, 30

**interlineations after execution: interlineations initialled by testatrix and signature attested by witnesses by initials: probate**—Two interlineations were introduced into the will after execution and attestation, but the testatrix signed with her initials in the margin opposite them, and the witnesses subscribed their initials in attestation of the signature of the testatrix:—*Held*, that the interlineations were duly executed, and were entitled to probate as part of the will. *In the goods of Blewitt*, 31

**evidence: will prepared by testatrix and contained in two sheets of note-paper: declarations of intention by testatrix before execution of will: declarations after execution shewing belief that intention had been effected: both classes of declarations admitted in evidence to prove constituent parts of the will at the time of its execution**—Oral and written declarations of a testator, whether made before or after the date of execution of a will, are admissible in evidence for the purpose of shewing what were the constituent parts of the will at the time of execution. *M. R.* made and duly executed her last will on the 1st of August, 1872. On her death in 1879, the will was found in an envelope in her writing-desk. It was contained in two sheets of note-paper stitched together book-wise. The will was all in the handwriting of the testatrix (with the exception of the attestation clause, which was filled in by one of the attesting witnesses), and, commencing with the first page of the outer sheet, it ran: "I appoint my nephews, R. J. G. and R. G. L., to be my joint executors to carry my will into effect. I appoint my nephew, R. J. G., to be my executor and sole residuary legatee.—*M. R.* And placed with my will the 1st day of August, 1872." The following page was a blank, and the will was continued on the inner sheet, which was paged, 1, 2, 3, 4: "The last will and testament of me," &c., and concluded with the attestation clause on the 4th page. The next, the 3rd page of the outer sheet, was a blank, and the last contained the indorsement, "The will of *M. R.*, August 1, 1872." The attesting witnesses were unable to say what were the contents of the will, or whether it was contained in one or two sheets of paper:—*Held*, that declarations of intention

by the testatrix before the execution of the will, and declarations by her subsequent to the execution, shewing the belief that she had effected her intention, were admissible in evidence, with the view of shewing what were the constituent parts of the will at the time of its execution. *Gould v. Lakes*, 59

**executor's oath: affirmation**—*A.*, a native of and domiciled in Germany, made and duly executed his last will and testament, with ten codicils thereto, according to German law, and thereof appointed *B.*, his nephew, executor. The will was proved in the Court of Gera, in Germany. It was requisite that probate of it should also be obtained in this Court, and the necessary papers for the purpose, with due instructions, were forwarded to *B.*, the executor, in Germany. The papers were returned by *B.*, accompanied by an affirmation which was made by him before the British Vice-Consul at Breslau, but it contained no statement that he had a conscientious objection to the taking of an oath, so as to bring him within the exception created by the Common Law Procedure Act, 1854, section 20. The Court held that the affirmation was defective, and refused to receive the papers. *In the goods of his Highness Prince Henry the sixty-ninth of Reuss-Köstritz*, 67

**will of Persian subject made in Persia: decree of Persian Court, certifying that eldest son of testator was the party entitled under the will to the property possessed by deceased in this country: administration (limited) with decrees annexed**—*A.*, a native of and domiciled in Persia, made and duly executed his will according to Persian law. By the law of Persia, which does not recognise the principle of representation of the estate of a deceased person, his will, as well as all his property, is taken possession of by the Court, having exclusive jurisdiction in matters of wills, inheritance and succession. This Court is composed of ecclesiastics called "*Moojateheda*." It is presided over by one of the body, styled the "*Superior Religious Head and Highest Authority*," and his decrees are irrevocable. Neither the original nor any copy of the will is allowed to go out of the possession of the Court. The contents of the will are published by the Court in the presence of the persons (legatees and heirs) interested in the property of the deceased, and a document is given to each, certifying the portion of the property to which he is entitled. The testator died possessed of certain property (funds standing in his name in the books of the Bank of England), and this property was appointed to *B.*, his eldest son, by the "*Superior Religious Head*," who gave a document under his hand and seal certifying that fact:—The Court granted to the duly appointed attorney of *B.* letters of administration (with the decree of the Persian Court annexed), limited to the property specified in the said decree. *In the goods of Dost Aly Khan*, 78

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## LAW JOURNAL REPORTS, 1880.

# SUPREME COURT OF JUDICATURE.

## ADDITIONAL RULES

### AS TO INVESTIGATIONS INTO SHIPPING CASUALTIES, 1880 :—

The Merchant Shipping Act, 1876, 39 & 40 Vict. c. 80.

The Shipping Casualties Investigations Act, 1879, 42 & 43 Vict. c. 72.

Under the authority of the above-mentioned Acts, I, the Right Honourable Hugh MacCalmont, Earl Cairns, Lord High Chancellor of Great Britain, hereby make the following general rules :—

#### *Short Title.*

1. These rules may be cited as "The Shipping Casualties (Appeal and Rehearing) Rules, 1880."

#### *Commencement.*

2. These rules shall come into operation on April 21, 1880.

#### *Interpretation.*

3. In the construction of these rules the word "judge" shall mean the wreck commissioner, stipendiary magistrate, justices or other authority empowered to hold an investigation into the conduct of a master, mate, or engineer, or into a shipping casualty.

#### *Publication of Rules.*

4. These rules shall be published by Her Majesty's Stationery Office through its agents, and a copy shall be kept at every Custom House and Mercantile Marine Office in the United Kingdom, and any person desiring to peruse them there shall be entitled to do so.

#### *Copy of Report where Certificate affected.*

5. Where the certificate of a master, mate, or engineer has been cancelled or suspended, the Board of Trade shall, on application by any party to the proceedings, give him a copy of the report made to the Board.

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#### *Appeals.*

6. Every appeal under section 2 of "The Shipping Casualties Investigations Act, 1879," shall be subject to the conditions and regulations following, namely :—

(a) The appellant shall, within seven days after the day on which the decision appealed against is pronounced, serve on such of the other parties to the proceedings as he may consider to be directly affected by the appeal, notice of his intention to appeal, and shall also, within two days after the appeal is set down, serve on the said parties notice of the general grounds of the appeal.

(b) If the appeal is brought by any party other than the Board of Trade, the appellant shall give such security, if any, by deposit of money or otherwise, for the costs to be occasioned by the appeal, as the Judge from whose decision the appeal is brought, on application made to him for that purpose, may direct.

(c) The appellant shall, before the expiration of the time within which notice of appeal may be given, leave with the officer for the time being appointed for that purpose by the Court to which the appeal is brought (in these rules referred to as the Court of Appeal), a copy of the notice of appeal, and the officer shall thereupon set down the appeal by entering it in the proper list.

(d) The Court of Appeal shall be assisted by not less than two assessors, to be selected, in the discretion of the Court, having regard

to the nature of each case, from either or both of the following classes :—

- (1.) Elder Brethren of the Trinity House.
- (2.) Persons approved from time to time by the Secretary of State as assessors for the purpose of formal investigations into shipping casualties, under section 30 of the "Merchant Shipping Act, 1876," and sub-section 1 of section 3 of "The Shipping Casualties Investigations Act, 1879."

(e) The Court of Appeal may, if it thinks fit, order any other person or persons, body or bodies, other than the parties served with the notice of appeal, to be added as a party or parties to the proceedings for the purposes of the appeal, on such terms with respect to costs and otherwise as to the Court of Appeal seems meet.

(f) Any party to the proceedings may object to the appearance on the appeal of any other party to the proceedings as unnecessary.

(g) The evidence taken before the Judge from whose decision the appeal is brought shall be proved before the Court of Appeal by a copy of the notes of the Judge, or of the shorthand writer, clerk, secretary, or other person authorised by him to take down the evidence, or by such other materials as the Court of Appeal thinks expedient; and a copy of the evidence, and of the report to the Board of Trade containing the decision from which the appeal is brought, and of the notice of the general grounds of the appeal, shall be left with the officer for the time being appointed for that purpose by the Court of Appeal before the appeal comes on for hearing. For the purpose of this rule, copies of the notes of the evidence, and of the report, shall be supplied to the appellant, on request, by the Judge or other person having charge thereof, on payment of the usual charge for copying.

(h) The Court of Appeal shall have full power to receive further evidence on questions of fact, such evidence to be either by oral examination in Court, by affidavit, or by deposition taken before an examiner or commissioner. Evidence may also be given with special leave of the Court of Appeal as to matters which have occurred since the date of the decision from which the appeal is brought.

(i) The Court of Appeal shall have power to make such order as to the whole or any part of the costs of and occasioned by the appeal as may seem just.

(j) Subject to the foregoing provisions of this rule, every appeal shall be conducted under and in accordance with the general

rules and regulations applicable to ordinary proceedings before the Court of Appeal to which it is brought; but there shall not be anything in the nature of pleadings, other than the notice of the general grounds of the appeal, except by special permission of the Court of Appeal.

(k) On the conclusion of an appeal, the Court of Appeal shall send to the Board of Trade a report of the case, similar to that required to be sent by the Judge from whose decision the appeal is brought.

#### *Rehearings by Order of Board of Trade.*

7. (a) Where the Board of Trade direct a rehearing under section 2 of "The Shipping Casualties Investigations Act, 1879," they shall cause such reasonable notice to be given to the parties whom they consider to be affected by the rehearing as the circumstances of the case may, in the opinion of the Board of Trade, permit.

(b) The provisions distinguished as (d), (e), (f), (g), (h), (i), (j), and (k) of the last foregoing Rule shall apply to a rehearing as if it were an appeal, and as if the Court or authority before whom the rehearing takes place were the Court of Appeal.

Dated this 17th day of April, 1880.

CATBRS, C.

The Merchant Shipping Act, 1876, 39 & 40  
Vict. c. 80.

The Shipping Casualties Investigations Act,  
1879, 42 & 43 Vict. c. 72.

39 & 40 Vict. c. 80. s. 30.

Whereas by section 30 of "The Merchant Shipping Act, 1876," it was provided as follows :—

"The wreck commissioner, justices, or other authority holding a formal investigation into a shipping casualty shall hold the same with the assistance of an assessor or assessors of nautical engineering or other special skill or knowledge, to be appointed by the commissioner, justices or authority out of a list of persons for the time being approved for the purpose by a Secretary of State."

"The commissioner, justices, or authority, when of opinion that the investigation is likely to involve the cancellation or suspension of the certificate of a master or mate, shall, where practicable, appoint a

person having experience in the merchant service to be one of the assessors."

42 & 43 Vict. c. 72. s. 3. sub-sec. 1.

And whereas by section 3, sub-section 1, of "The Shipping Casualties Investigations Act, 1879," it was thus enacted:—

3. (1.) The list of persons approved as assessors for the purpose of formal investigations into shipping casualties shall be in force for three years only, but persons entered in any such list may be approved for any subsequent list. The list of those persons in force at the passing of this Act shall continue in force until the end of the year one thousand eight hundred and eighty, but nothing in this section shall affect the power of the Secretary of State to withdraw his approval of any name on any such list or to approve of any additional name.

And whereas the Secretary of State has directed that the assessors shall, so far as in his opinion circumstances permit, be taken in order of rotation within each class or sub-class, and has further directed that the assessors placed by him on the list of assessors shall be classified according to the qualifications set forth in the Additional Rules as to Investigations into Shipping Casualties, dated the 20th day of December, 1879.

And whereas the Secretary of State has further directed that the following qualifications with respect to Class II. Mercantile Marine Engineers, shall be substituted for the qualifications set forth in the said rules, viz. :—

#### *Qualifications.*

##### *Classes.*

#### *Class II. Mercantile Marine Engineers.*

Five years' service as an engineer in the merchant service, and at the time of appointment holding a first-class certificate of competency as an engineer.

Now under the authority of the above-mentioned Acts, I, the Right Honourable Hugh MacCalmont, Earl Cairns, Lord High Chancellor of Great Britain, hereby make the following General Rules:—

##### *Commencement.*

1. These Rules shall come into operation on the 19th day of April, 1880.

##### *Publication of Rules.*

2. These Rules shall be published by Her Majesty's Stationery Office through its agents, and a copy shall be kept at every Custom House and Mercantile Marine Office in the United Kingdom, and any person desiring to peruse them there shall be entitled to do so.

3. "The Shipping Casualties Rules, 1879," shall be read and construed, and shall take effect, as if the qualifications above set forth with respect to Class II. Mercantile Marine Engineers had been inserted in the said Rules in lieu of the qualifications therein specified.

Dated this 19th day of April, 1880.

CAIRNS, C.



LAW JOURNAL REPORTS, 1880.

SUPREME COURT OF JUDICATURE.

RULES AND REGULATIONS

AS TO

DIVORCE AND MATRIMONIAL CAUSES

MADE UNDER THE PROVISIONS OF

20 & 21 Vict. Cap. 85.  
23 & 24 Vict. Cap. 144.

32 & 33 Vict. Cap. 62.  
38 & 39 Vict. Cap. 77.

RULES AND REGULATIONS, 26TH DECEMBER,  
1866.

All rules and regulations heretofore made and issued for Her Majesty's Court for Divorce and Matrimonial Causes shall be revoked on and after the 11th day of January, 1866, except so far as concerns any matters or things done in accordance with them prior to the said day.

The following rules and regulations shall take effect in Her Majesty's Court for Divorce and Matrimonial Causes on and after the 11th day of January, 1866.

*Petition.*

1. Proceedings before the Court for Divorce and Matrimonial Causes shall be commenced by filing a petition.—A form of petition is given in the Appendix, No. 1.

2. Every petition shall be accompanied by an affidavit made by the petitioner, verifying the facts of which he or she has personal cognisance, and deposing as to belief in the truth of the other facts alleged in the petition, and such affidavits shall be filed with the petition.

*See also Rule 175.*

3. In cases where the petitioner is seeking a decree of nullity of marriage, or of judicial separation, or of dissolution of marriage, or a decree in a suit of jactitation of marriage, the petitioner's affidavit, filed with his or her petition, shall further state that no col-

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lusion or connivance exists between the petitioner and the other party to the marriage or alleged marriage.

*Co-respondents.*

4. Upon a husband filing a petition for dissolution of marriage on the ground of adultery, the alleged adulterers shall be made co-respondents in the cause, unless the Judge Ordinary shall otherwise direct.

5. Application for such direction is to be made to the Judge Ordinary on motion founded on affidavit.

6. If the names of the alleged adulterers, or either of them, should be unknown to the petitioner at the time of filing his petition, the same must be supplied as soon as known, and application must be made forthwith to one of the Registrars to amend the petition by inserting such name therein; and the Registrar to whom the application is made shall give his directions as to such amendment, and such further directions as he may think fit as to service of the amended petition.

7. The term "respondent," where the same is hereinafter used, shall include all co-respondents so far as the same is applicable to them.

*Citation.*

8. Every petitioner who files a petition and affidavit shall forthwith extract a cita-

tion, under seal of the Court, for service on each respondent in the cause. A form of citation is given in the Appendix, No. 2.

9. Every citation shall be written or printed on parchment, and the party extracting the same, or his or her proctor, solicitor or attorney, shall take it, together with a *præcipe*, to the Registry, and there deposit the *præcipe*, and get the citation signed and sealed.—A form of *præcipe* is given in the Appendix, No. 3. The address given in the *præcipe* must be within three miles of the General Post Office.

#### *Service.*

10. Citations are to be served personally when that can be done.

11. Service of a citation shall be effected by personally delivering a true copy of the citation to the party cited, and producing the original, if required.

12. To every person served with a citation shall be delivered, together with the copy of the citation, a certified copy of the petition, under seal of the Court.

13. In cases where personal service cannot be effected, application may be made by motion to the Judge Ordinary, or to the Registrars in his absence, to substitute some other mode of service.

14. After service has been effected, the citation, with a certificate of service indorsed thereon, shall be forthwith returned into and filed in the Registry.—The form of certificate of service is given in the Appendix, No. 4.

15. When it is ordered that a citation shall be advertised, the newspapers containing the advertisements are to be filed in the Registry with the citation.

16. The above rules, so far as they relate to the service of citations, are to apply to the service of all other instruments requiring personal service.

17. Before a petitioner can proceed, after having extracted a citation, an appearance must have been entered by or on behalf of the respondents, or it must be shewn, by affidavit filed in the Registry, that they have been duly cited and have not appeared.

18. An affidavit of service of a citation must be substantially in the form given in the Appendix, No. 5, and the citation referred to in the affidavit must be annexed to such affidavit, and marked by the person before whom the same is sworn.

#### *Appearance.*

19. All appearances to citations are to be entered in the Registry in a book provided for that purpose.—The form of entry of appearance is given in the Appendix, No. 6.

20. An appearance may be entered at any time before a proceeding has been taken in default, or afterwards, as hereinafter directed, or by leave of the Judge Ordinary, or of the Registrars in his absence, to be applied for by motion founded on affidavit.

*See also* Rule 185.

21. Every entry of an appearance shall be accompanied by an address, within three miles of the General Post Office.

22. If a party cited wishes to raise any question as to the jurisdiction of the Court, he or she must enter an appearance under protest, and within eight days file in the Registry his or her act on petition in extension of such protest, and on the same day deliver a copy thereof to the petitioner. After the entry of an absolute appearance to the citation, a party cited cannot raise any objection as to jurisdiction.

*See* Rules from 56 to 61 as to proceedings on act on petition.

#### *Interveners.*

23. Application for leave to intervene in any cause must be made to the Judge Ordinary by motion, supported by affidavit.

24. Every party intervening must join in the proceedings at the stage in which he finds them, unless it is otherwise ordered by the Judge Ordinary.

#### *Suits in Forma Pauperis.*

25. Any person desirous of prosecuting a suit *in forma pauperis* is to lay a case before counsel, and obtain an opinion that he or she has reasonable grounds for proceeding.

26. No person shall be admitted to prosecute a suit *in forma pauperis* without the order of the Judge Ordinary; and to obtain such order the case laid before counsel and his opinion thereon, with an affidavit of the party or of his or her proctor, solicitor or attorney, that the said case contains a full and true statement of all the material facts, to the best of his or her knowledge and belief, and an affidavit of the party applying as to his or her income or means of living, and that he or she is not worth 25*l.*, after payment of his or her just debts, save and except his or her wearing apparel, shall be produced at the time such application is made.

*See also* Rules 208 to 211.

27. Where a husband admitted to sue as a pauper neglects to proceed in a cause, he may be called upon by summons to shew cause why he should not pay costs, though he has not been dispaupered, and why all further proceedings should not be stayed until such costs be paid.

*Answer.*

28. Each respondent who has entered an appearance may, within twenty-one days after service of citation on him or her, file in the Registry an answer to the petition.—A form of answer is given in the Appendix, No. 7.

*See also* Rule 186.

29. Each respondent shall, on the day he or she files an answer, deliver a copy thereof to the petitioner, or to his or her proctor, solicitor or attorney.

30. Every answer which contains matter other than a simple denial of the facts stated in the petition, shall be accompanied by an affidavit made by the respondent, verifying such other or additional matter, so far as he or she has personal cognisance thereof, and deposing as to his or her belief in the truth of the rest of such other or additional matter, and such affidavit shall be filed with the answer.

31. In cases involving a decree of nullity of marriage or of judicial separation, or of dissolution of marriage, or a decree in a suit of jactitation of marriage, the respondent who is husband or wife of the petitioner shall, in the affidavit filed with the answer, further state that there is not any collusion or connivance between the deponent and the petitioner.

*Further Pleadings.*

32. Within fourteen days from the filing and delivery of the answer, the petitioner may file a reply thereto, and the same period shall be allowed for filing any further pleading by way of rejoinder or any subsequent pleading.

33. A copy of every reply and subsequent pleading shall, on the day the same is filed, be delivered to the opposite parties, or to their proctor, solicitor or attorney.

*General Rules as to Pleadings.*

34. Either party desiring to alter or amend any pleading must apply by motion to the Court for permission to do so, unless the alteration or amendment be merely verbal, or in the nature of a clerical error, in which case it may be made by order of the Judge Ordinary, or of one of the Registrars in his absence, obtained on summons.

*See also* Rules 181 to 184 and Rule 187.

35. When a petition, answer or other pleading has been ordered to be altered or amended, the time for filing and delivering a copy of the next pleading shall be reckoned from the time of the order having been complied with.

36. A copy of every pleading, shewing the

alterations and amendments made therein, shall be delivered to the opposite parties on the day such alterations and amendments are made in the pleadings filed in the Registry; and the opposite parties, if they have already pleaded in answer thereto, shall be at liberty to amend such answer within four days, or such further time as may be allowed for the purpose.

37. If either party in the cause fail to file or deliver a copy of the answer, reply or other pleading, or to alter or amend the same, or to deliver a copy of any altered or amended pleading, within the time allowed for the purpose, the party to whom the copy of such answer, reply or other pleading, or altered or amended pleading, ought to have been delivered, shall not be bound to receive it; and such answer, reply or other pleading shall not be filed, or be treated or considered as having been filed, or be altered or amended, unless by order of the Judge Ordinary, or of one of the Registrars, to be obtained on summons. The expense of obtaining such order shall fall on the party applying for it, unless the Judge Ordinary or Registrar shall otherwise direct.

38. Applications for further particulars of matters pleaded are to be made to the Judge Ordinary, or to one of the Registrars in his absence, by summons, and not by motion.

*See also* Rules 181 to 184. .

*Service of Pleadings, &c.*

39. It shall be sufficient to leave all pleadings and other instruments, personal service of which is not expressly required by these rules and regulations, at the respective addresses furnished by or on behalf of the several parties to the cause.

*See also* Rule 114.

*Mode of Trial.*

40. When the pleadings on being concluded have raised any questions of fact, the petitioner, within fourteen days from the filing of the last pleading, or at the expiration of that time, on the next day appointed for hearing motions in this Court, or in case the petitioner should fail to do so at such time, either of the respondents on whose behalf such questions have been raised may apply to the Judge Ordinary by motion to direct the truth of such questions of fact to be tried by a special or common jury.

*See also* Rule 205.

*Questions of Fact for the Jury.*

41. Whenever the Judge Ordinary directs the issues of fact in a cause to be tried by a

jury, the questions of fact raised by the pleadings are to be briefly stated in writing by the petitioner, and settled by one of the Registrars.—A form is given in the Appendix, No. 8.

42. Should the petitioner fail to prepare and deposit the questions for settlement in the Registry within fourteen days after the Judge Ordinary has directed the mode of trial, either of the respondents on whose behalf such questions have been raised shall be at liberty to do so.

43. After the questions have been settled by the Registrar, the party who has deposited the same shall deliver a copy thereof as settled to each of the other parties to be heard on the trial of the cause, and either of such parties shall be at liberty to apply to the Judge Ordinary, by summons within eight days, or at the expiration of that time on the next day appointed for hearing summonses in this Court, to alter or amend the same, and his decision shall be final.

*Setting down the Cause for Trial or Hearing.*

44. In cases to be tried by a jury, the petitioner, after the expiration of eight days from the delivery of copies of the questions for the jury to the opposite parties, or from alteration or amendment of the same, in pursuance of the order of the Judge Ordinary, shall file such questions as finally settled in the Registry, and at the same time set down the cause as ready for trial, and on the same day give notice of his having done so to each party for whom an appearance has been entered.

*See also Rule 206.*

45. In cases to be heard without a jury, the petitioner shall, after obtaining directions as to the mode of hearing, set the cause down for hearing, and on the same day give notice of his having done so to each party in the cause for whom an appearance has been entered.

*See also Rules 205 and 206.*

46. If the petitioner fail to file the questions for the jury, or to set down the cause for trial or hearing, or to give due notice thereof, for the space of one month, after directions have been given as to the mode in which the cause shall be tried or heard, either of the respondents entitled to be heard at such trial or hearing may file the questions for the jury, and set the cause down for trial or hearing, and shall on the same day give notice of his having done so to the petitioner, and to each of the other parties to the cause for whom an appearance has been entered.

47. A copy of every notice of the cause being set down for trial or hearing shall be

filed in the Registry, and the cause shall come on in its turn, unless the Judge Ordinary shall otherwise direct.

*Trial or Hearing.*

48. No cause shall be called on for trial or hearing until after the expiration of ten days from the day when the same has been set down for trial or hearing, and notice thereof has been given, save with the consent of all parties to the suit.

49. The Registrar shall enter in the court book the finding of the jury and the decree of the Court, and shall sign the same.

50. Either of the respondents in the cause, after entering an appearance, without filing an answer to the petition in the principal cause, may be heard in respect of any question as to costs, and a respondent, who is husband or wife of the petitioner, may be heard also in respect to any question as to custody of children; but a respondent who may be so heard is not at liberty to bring in affidavits touching matters in issue in the principal cause, and no such affidavits can be read or made use of as evidence in the cause.

*Evidence taken by Affidavit.*

51. When the Judge Ordinary has directed that all or any of the facts set forth in the pleadings be proved by affidavits, such affidavits shall be filed in the Registry within eight days from the time when such direction was given, unless the Judge Ordinary shall otherwise direct.

*See also Rule 188.*

52. Counter-affidavits as to any facts to be proved by affidavit may be filed within eight days from the filing of the affidavits which they are intended to answer.

53. Copies of all such affidavits and counter-affidavits shall, on the day the same are filed, be delivered to the other parties to be heard on the trial or hearing of the cause, or to their proctors, solicitors or attorneys.

54. Affidavits in reply to such counter-affidavits cannot be filed without permission of the Judge Ordinary or of the Registrars in his absence.

55. Application for an order for the attendance of a deponent, for the purpose of being cross-examined in open Court, shall be made to the Judge Ordinary, on summons.

*Proceedings by Petition.*

56. Any party to a cause who has entered an appearance may apply on summons to the Judge Ordinary, or in his absence to the Registrars, to be heard on his petition touching any collateral question which may arise in a suit.

57. The party to whom leave has been given to be heard on his petition shall, within eight days, file his act on petition in the Registry, and on the same day deliver a copy thereof to such parties in the cause as are required to answer thereto.

58. Each party to whom a copy of an act on petition is delivered shall, within eight days after receiving the same, file his or her answer thereto in the Registry, and on the same day deliver a copy thereof to the opposite party; and the same course shall be pursued with respect to the reply, rejoinder, &c., until the act on petition is concluded.

59. A form of act on petition, answer and conclusion is given in the Appendix, No. 9.

60. Each party to the act on petition shall, within eight days from that on which the last statement in answer is filed, file in the Registry such affidavits and other proofs as may be necessary in support of their several averments.

61. After the time for filing affidavits and proofs has expired, the party filing the act on petition is to set down the petition for hearing in the same manner as a cause; and in the event of his failing to do so within a month, any party who has filed an answer thereto may set the same down for hearing, and the petition will be heard in its turn with other causes to be heard by the Judge Ordinary without a jury.

#### *New Trial and Hearing.*

62. An application to the Judge Ordinary for a new trial of issues of fact tried by a jury, or for a rehearing of a cause, may be made by motion within fourteen days from the day on which the issues were tried or the cause was heard, if the Judge Ordinary be then sitting to hear motions; if not, on the first day appointed for hearing motions in this Court after the expiration of the fourteen days.

#### *Petition for Reversal of Decree of Judicial Separation.*

63. A petition to the Court for the reversal of a decree of judicial separation must set out the grounds on which the petitioner relies.—A form of such petition is given in the Appendix, No. 10.

64. Before such a petition can be filed, an appearance on behalf of the party praying for a reversal of the decree of judicial separation must be entered in the cause in which the decree has been pronounced.

65. A certified copy of such a petition, under seal of the Court, shall be delivered personally to the party in the cause in whose favour the decree has been made, who may,

within fourteen days, file an answer thereto in the Registry, and shall, on the day on which the answer is filed, deliver a copy thereof to the other party in the cause, or to his or her proctor, solicitor or attorney.

66. All subsequent pleadings and proceedings arising from such petition and answer shall be filed and carried on in the same manner as before directed in respect of an original petition for judicial separation, and answer thereto, so far as such directions are applicable.

#### *Demurrer.*

67. All demurrers are to be set down for hearing in the same manner as causes, and will come on in their turn with other causes to be heard by the Judge Ordinary without a jury, unless the Judge Ordinary shall direct otherwise.

#### *Intervention of the Queen's Proctor.*

68. The Queen's Proctor shall, within fourteen days after he has obtained leave to intervene in any cause, enter an appearance and plead to the petition; and on the day he files his plea in the Registry shall deliver a copy thereof to the petitioner, or to his proctor, solicitor or attorney.

69. All subsequent pleadings and proceedings in respect to the Queen's Proctor's intervention in a cause shall be filed and carried on in the same manner as before directed in respect of the pleadings and proceedings of the original parties to the cause.

*See also Rule 202.*

#### *Shewing Cause against a Decree.*

70. Any person wishing to shew cause against making absolute a decree *nisi* for dissolution of a marriage shall enter an appearance in the cause in which such decree *nisi* has been pronounced.

71. Every such person shall, at the time of entering an appearance, or within four days thereafter, file affidavits setting forth the facts upon which he relies.

72. Upon the same day on which such person files his affidavits he shall deliver a copy of the same to the party in the cause in whose favour the decree *nisi* has been pronounced.

73. The party in the cause in whose favour the decree *nisi* has been pronounced may, within eight days after delivery of the affidavits, file affidavits in answer, and shall, upon the day such affidavits are filed, deliver a copy thereof to the person shewing cause against the decree being made absolute.

74. The person shewing cause against the decree *nisi* being made absolute may, within

eight days, file affidavits in reply, and shall upon the same day deliver copies thereof to the party supporting the decree *nisi*.

75. No affidavits are to be filed in rejoinder to the affidavits in reply without the permission of the Judge Ordinary, or of one of the Registrars in his absence.

76. The questions raised on such affidavits shall be argued in such manner and at such time as the Judge Ordinary may on application by motion direct; and if he thinks fit to direct any controverted questions of fact to be tried by a jury, the same shall be settled and tried in the same manner and subject to the same rules as any other issue tried in this Court.

Rules 70 to 76 not applicable to the Queen's Proctor. See Rule 202.

#### *Appeals to the full Court.*

77. An appeal to the full Court from a decision of the Judge Ordinary must be asserted in writing and the instrument of appeal filed in the Registry within the time allowed by law for appealing from such decision; and on the same day on which the appeal is filed, notice thereof, and a copy of the appeal, shall be delivered to each respondent in the appeal, or to his or her proctor, solicitor or attorney.—A form of instrument of appeal is given in the Appendix, No. 11.

78. The appellant within ten days after filing his instrument of appeal, or within such further time as may be allowed by the Judge Ordinary, or by the Registrars in his absence, shall file in the Registry his case in support of the appeal in triplicate, and on the same day deliver a copy thereof to each respondent in the appeal, or to his proctor, solicitor or attorney, who, within ten days from the time of such filing and delivery, or from such further time as may be allowed for the purpose by the Judge Ordinary, or the Registrars in his absence, shall be at liberty to file in the Registry a case against the appeal, also in triplicate, and the respondent shall on the same day deliver a copy thereof to the appellant, or to his proctor, solicitor or attorney.

79. After the expiration of ten days from the time when the respondent has filed his case, or, if he has filed none, from the time allowed him for the purpose, the appeal shall stand for hearing at the next sittings of the full Court, and will be called on in its turn, unless otherwise directed.

#### *Decree absolute.*

80. All applications to make absolute a decree *nisi* for a dissolution of a marriage

must be made to the Court by motion. In support of such applications it must be shown by affidavit filed with the case for motion that search has been made in the proper books at the Registry up to within two days of the affidavit being filed, and that at such time no person had obtained leave to intervene in the cause, and that no appearance had been entered nor any affidavits filed on behalf of any person wishing to shew cause against the decree *nisi* being made absolute; and in case leave to intervene had been obtained, or appearance entered, or affidavits filed on behalf of any such person, it must be shown by affidavit what proceedings (if any) had been taken thereon, but it shall not be necessary to file a copy of the decree *nisi*.—A form of affidavit is given in the Appendix, No. 12.

See also Rules 194 and 207.

#### *Alimony.*

81. The wife, being the petitioner in a cause, may file her petition for alimony pending suit at any time after the citation has been duly served on the husband, or after order made by the Judge Ordinary to dispense with such service, provided the factum of marriage between the parties is established by affidavit previously filed.

82. The wife being the respondent in a cause, after having entered an appearance, may also file her petition for alimony pending suit.

83. A form of petition for alimony is given in the Appendix, No. 13.

84. The husband shall, within eight days after the filing and delivery of a petition for alimony, file his answer thereto upon oath.

85. The husband, being respondent in the cause, must enter an appearance before he can file an answer to a petition for alimony.

86. The wife, if not satisfied with the husband's answer, may object to the same as insufficient, and apply to the Judge Ordinary on motion to order him to give a further and fuller answer, or to order his attendance on the hearing of the petition for the purpose of being examined thereon.

See also Rule 189.

87. In case the answer of the husband alleges that the wife has property of her own, she may (within eight days) file a reply on oath to that allegation; but the husband is not at liberty to file a rejoinder to such reply without permission of the Judge Ordinary, or of one of the Registrars in his absence.

88. A copy of every petition for alimony, answer and reply, must be delivered to the opposite party, or to his or her proctor,

solicitor or attorney, on the day the same is filed.

89. After the husband has filed his answer to the petition for alimony (subject to any order as to costs), or, if no answer is filed, at the expiration of the time allowed for filing an answer, the wife may proceed to examine witnesses in support of her petition, and apply by motion for an allotment of alimony pending suit, notice of the motion, and of the intention to examine witnesses, being given to the husband, or to his proctor, solicitor or attorney, four days previously to the motion being heard and the witnesses examined, unless the Judge Ordinary shall dispense with such notice.

*See also Rules 191 and 192.*

90. No affidavits can be read or made use of as evidence in support of or in opposition to the averments contained in a petition for alimony, or in an answer to such a petition, or in a reply, except such as may be required by the Judge Ordinary or by one of the Registrars.

91. A wife who has obtained a final decree of judicial separation in her favour, and has previously thereto filed her petition for alimony pending suit, on such decree being affirmed on appeal to the full Court, or after the expiration of the time for appealing against the decree, if no appeal be then pending, may apply to the Judge Ordinary by motion for an allotment of permanent alimony; provided that she shall, eight days at least before making such application, give notice thereof to the husband, or to his proctor, solicitor or attorney.

*See also Rule 190.*

92. A wife may at any time after alimony has been allotted to her, whether alimony pending suit or permanent alimony, file her petition for an increase of the alimony allotted by reason of the increased faculties of the husband, or the husband may file a petition for a diminution of the alimony allotted by reason of reduced faculties; and the course of proceeding in such cases shall be the same as required by these Rules and Regulations in respect of the original petition for alimony, and the allotment thereof, so far as the same are applicable.

93. Permanent alimony shall, unless otherwise ordered, commence and be computed from the date of the final decree of the Judge Ordinary, or of the full Court on appeal, as the case may be.

94. Alimony, pending suit, and also permanent alimony, shall be paid to the wife, or to some person or persons to be nominated in writing by her, and approved of by the Court, as trustee or trustees on her behalf.

#### *Maintenance and Settlements.*

95. Applications to the Court to exercise the authority given by sections 32 and 45 of 20 & 21 Vict. c. 85, and by section 5 of the 22 & 23 Vict. c. 61, are to be made in a separate petition, which must, unless by leave of the Judge, be filed as soon as by the said statutes such applications can be made, or within one month thereafter.

96. In cases of application for maintenance under section 32 of the 20 & 21 Vict. c. 85, such petition may be filed as soon as a decree *nisi* has been pronounced, but not before.

97. A certified copy of such petition, under seal of the Court, shall be personally served on the husband or wife (as the case may be), and on the person or persons who may have any legal or beneficial interest in the property in respect of which the application is made, unless the Judge Ordinary on motion shall direct any other mode of service, or dispense with service of the same on them or either of them.

98. The husband or wife (as the case may be), and the other person or persons (if any) who are served with such petition, within fourteen days after service, may file his, her or their answer on oath to the said petition, and shall on the same day deliver a copy thereof to the opposite party, or to his proctor, solicitor or attorney.

99. Any person served with the petition, not being a party to the principal cause, must enter an appearance before he or she can file an answer thereto.

100. Within fourteen days from the filing the answer, the opposite party may file a reply thereto, and the same period shall be allowed for filing any further pleading by way of rejoinder.

101. Such pleadings, when completed, shall in the first instance be referred to one of the Registrars, who shall investigate the averments therein contained, in the presence of the parties, their proctors, solicitors or attorneys, and who for that purpose shall be at liberty to require the production of any documents referred to in such pleadings, or to call for any affidavits, and shall report in writing to the Court the result of his investigation, and any special circumstances to be taken into consideration with reference to the prayer of the petition.

*See also Rule 204.*

102. The report of the Registrar shall be filed in the Registry by the husband or wife on whose behalf the petition has been filed, who shall give notice thereof to the other parties heard by the Registrar; and either of the parties, within fourteen days after

such notice has been given, if the Judge Ordinary be then sitting to hear motions, otherwise on the first day appointed for motions after the expiration of fourteen days, may be heard by the Judge Ordinary on motion in objection to the Registrar's report, or may apply on motion for a decree or order to confirm the same, and to carry out the prayer of the petition.

103. The costs of a wife of and arising from the said petition or answer shall not be allowed on taxation of costs against the husband before the final decree in the principal cause, without direction of the Judge Ordinary.

#### *Custody of and Access to Children.*

104. Before the trial or hearing of a cause a husband or wife who are parties to it may apply for an order with respect to the custody, maintenance or education of or for access to children, issue of their marriage, to the Judge Ordinary, by motion founded on affidavit.

*See also Rule 212.*

#### *Guardians to Minors.*

105. A minor above the age of seven years may elect any one or more of his or her next-of-kin, or next friends, as guardian, for the purpose of proceeding on his or her behalf as petitioner, respondent or intervener in a cause.—The form of an instrument of election is given in the Appendix, No. 14.

106. The necessary instrument of election must be filed in the Registry before the guardian elected can be permitted to extract a citation or to enter an appearance on behalf of the minor.

107. When a minor shall elect some person or persons other than his or her next-of-kin, as guardian for the purposes of a suit, or when an infant (under the age of seven years) becomes a party to a suit, application, founded on affidavit, is to be made to one of the Registrars, who will assign a guardian to the minor or infant for such suit.

108. It shall not be necessary for a minor who, as an alleged adulterer, is made a co-respondent in a suit, to elect a guardian or to have a guardian assigned to him for the purpose of conducting his defence.

#### *Subpoenas.*

109. Every subpoena shall be written or printed on parchment, and may include the names of any number of witnesses. The party issuing the same, or his or her proctor, solicitor or attorney, shall take it, together

with a præcipe, to the Registry, and there get it signed and sealed, and there deposit the præcipe.—Forms of subpoenas, Nos. 15 and 17, and forms of præcipe, Nos. 16 and 18, are given in the Appendix.

*See also Rule 180.*

#### *Writs of Attachment and other Writs.*

110. Applications for writs of attachment, and also for writs of *fieri facias* and of sequestration, must be made to the Judge Ordinary by motion in Court.

*See also Rules 179 and 203.*

111. Such writs when ordered to issue, are to be prepared by the party at whose instance the order has been obtained, and taken to the Registry, with an office copy of the order, and, when approved and signed by one of the Registrars, shall be sealed with the seal of the Court, and it shall not be necessary for the Judge Ordinary or for other Judges of the Court to sign such writs.

112. Any person in custody under a writ of attachment may apply for his or her discharge to the Judge Ordinary if the Court be then sitting; if not, then to one of the Registrars, who for good cause shown shall have power to order such discharge.

#### *Notices.*

113. All notices required by these Rules and Regulations, or by the practice of the Court, shall be in writing, and signed by the party, or by his or her proctor, solicitor or attorney.

#### *Service of Notices, &c.*

114. It shall be sufficient to leave all notices and copies of pleadings and other instruments which by these Rules and Regulations are required to be given or delivered to the opposite parties in the cause, or to their proctors, solicitors or attorneys, and personal service of which is not expressly required at the address furnished as aforesaid by the petitioner and respondent respectively.

*See also Rule 39.*

115. When it is necessary to give notice of any motion to be made to the Court, such notice shall be served on the opposite parties who have entered an appearance four clear days previously to the hearing of such motion, and a copy of the notice so served shall be filed in the Registry with the case for motion, but no proof of the service of the notice will be required, unless by direction of the Judge Ordinary.

116. If an order be obtained on motion without due notice to the opposite parties, such order will be rescinded on the applica-

tion of the parties upon whom the notice should have been served; and the expense of and arising from the rescinding of such order shall fall on the party who obtained it, unless the Judge Ordinary shall otherwise direct.

117. When it is necessary to serve personally any order or decree of the Court, the original order or decree, or an office copy thereof, under seal of the Court, must be produced to the party served, and annexed to the affidavit of service marked as an exhibit by the Commissioner or other person before whom the affidavit is sworn.

*Office Copies, Extracts, &c.*

118. The Registrars of the principal Registry of the Court of Probate are to have the custody of all pleadings and other documents now or hereafter to be brought in or filed, and of all entries of orders and decrees made in any matter or suit depending in the Court for Divorce and Matrimonial Causes; and all Rules and Orders, and fees payable in respect of searches for and inspection or copies of and extracts from and attendance with books and documents in the Registry of the Court of Probate, shall extend to such pleadings and other documents brought in or filed, and all entries of orders and decrees made in the Court for Divorce and Matrimonial Causes, save that the length of copies and extracts shall in all cases be computed at the rate of seventy-two words per folio.

119. Office copies or extracts furnished from the Registry of the Court of Probate will not be collated with the originals from which the same are copied, unless specially required. Every copy so required to be examined shall be certified under the hand of one of the principal Registrars of the Court of Probate to be an examined copy.

120. The seal of the Court will not be affixed to any copy which is not certified to be an examined copy.

*Time fixed by these Rules.*

121. The Judge Ordinary shall in every case in which a time is fixed by these Rules and Regulations for the performance of any act, or for any proceeding in default, have power to extend the same to such time and with such qualifications and restrictions and on such terms as to him may seem fit.

122. To prevent the time limited for the performance of any act, or for any proceeding in default, from expiring before application can be made to the Judge Ordinary for an extension thereof, any one of the Registrars may, upon reasonable cause being shewn,

extend the time, provided that such time shall in no case be extended beyond the day upon which the Judge Ordinary shall next sit in chambers.

*See also Rules 181 to 184.*

123. The time fixed by these Rules and Regulations for the performance of any act, or for any proceeding in a cause, shall in all cases be exclusive of Sundays, Christmas Day and Good Friday.

*Protection Orders.*

124. Applications on the part of a wife deserted by her husband for an order to protect her earnings and property, acquired since the commencement of such desertion, shall be made in writing to the Judge Ordinary in chambers, and supported by affidavit. —A form of application is given in the Appendix, No. 19.

*See also Rule 197.*

125. Applications for the discharge of any order made to protect the earnings and property of a wife are to be made to the Judge Ordinary by motion, and supported by affidavit. Notice of such motion, and copies of any affidavit or other document to be read or used in support thereof, must be personally served on the wife eight clear days before the motion is heard.

*Bond not required.*

126. On a decree of judicial separation being pronounced, it shall not be necessary for either party to enter into a bond conditioned against marrying again.

*Change of Proctor, Solicitor or Attorney.*

127. A party may obtain an order to change his or her proctor, solicitor or attorney upon application by summons to the Judge Ordinary, or to the Registrars in his absence.

*See also Rules 181 to 184.*

128. In case the former proctor, solicitor or attorney neglects to file his bill of costs for taxation at the time required by the order served upon him, the party may, with the sanction and by order of the Judge Ordinary or of the Registrars, proceed in the cause by the new proctor, solicitor or attorney, without previous payment of such costs.

*Order for the Immediate Examination of a Witness.*

129. Application for an order for the immediate examination of a witness who is within the jurisdiction of the Court is to be made to the Judge Ordinary, or to the Registrars in his absence, by summons, or if on

behalf of a petitioner proceeding in default of appearance of the parties cited in the cause, without summons before one of the Registrars, who will direct the order to issue, or refer the application to the Judge Ordinary, as he may think fit.

*See also Rules 181 to 184.*

130. Such witness shall be examined *viva voce*, unless otherwise directed, before a person to be agreed upon by the parties in the cause, or to be nominated by the Judge Ordinary or by the Registrars to whom the application for the order is made.

131. The parties entitled to cross-examine the witness to be examined under such an order shall have four clear days' notice of the time and place appointed for the examination, unless the Judge Ordinary or the Registrars to whom the application is made for the order shall direct a shorter notice to be given.

*Commissions and Requisitions for Examination of Witnesses.*

132. Application for a commission or requisition to examine witnesses who are out of the jurisdiction of the Court is to be made by summons, or if on behalf of a petitioner proceeding in default of appearance, without summons, before one of the Registrars, who will order such commission or requisition to issue, or refer the application to the Judge Ordinary, as he may think fit.

133. A commission or requisition for examination of witnesses may be addressed to any person to be nominated and agreed upon by the parties in the cause, and approved of by the Registrar, or for want of agreement to be nominated by the Registrar to whom the application is made.

134. The commission or requisition is to be drawn up and prepared by the party applying for the same, and a copy thereof shall be delivered to the parties entitled to cross-examine the witnesses to be examined thereunder two clear days before such commission or requisition shall issue, under seal of the Court, and they or either of them may apply to one of the Registrars by summons to alter or amend the commission or requisition, or to insert any special provision therein, and the Registrar shall make an order on such application, or refer the matter to the Judge Ordinary.—A form of a commission and requisition is given in the Appendix, No. 20.

135. Any of the parties to the cause may apply to one of the Registrars by summons for leave to join in a commission or requisition, and to examine witnesses thereunder; and the Registrar to whom the application is

made may direct the necessary alterations to be made in the commission or requisition for that purpose, and settle the same, or refer the application to the Judge Ordinary.

136. After the issuing of a summons to shew cause why a party to the cause should not have leave to join in a commission or requisition, such commission or requisition shall not issue under seal without the direction of one of the Registrars.

137. In case a husband or wife shall apply for and obtain an order or a commission or requisition for the examination of witnesses, the wife shall be at liberty, without any special order for that purpose, to apply by summons to one of the Registrars to ascertain and report to the Court what is a sufficient sum of money to be paid or secured to the wife to cover her expenses in attending at the examination of such witnesses in pursuance of such order, or in virtue of such commission or requisition, and such sum of money shall be paid or secured before such order or such commission or requisition shall issue from the Registry, unless the Judge Ordinary, or one of the Registrars in his absence, shall otherwise direct.

*See also Rule 198.*

*Affidavits.*

138. Every affidavit is to be drawn in the first person, and the addition and true place of abode of every deponent is to be inserted therein.

139. In every affidavit made by two or more persons, the names of the several persons making it are to be written in the jurat.

140. No affidavit will be admitted in any matter depending in the Court for Divorce and Matrimonial Causes in which any material part is written on an erasure, or in the jurat of which there is any interlineation or erasure, or in which there is any interlineation the extent of which at the time when the affidavit was sworn is not clearly shewn by the initials of the Registrar, Commissioner or other authority before whom it was sworn.

141. Where an affidavit is made by any person who is blind, or who, from his or her signature or otherwise, appears to be illiterate, the Registrar, Commissioner or other authority before whom such affidavit is made is to state in the jurat that the affidavit was read in the presence of the party making the same, and that such party seemed perfectly to understand the same, and also made his or her mark, or wrote his or her signature thereto, in the presence of the Registrar, Commissioner or other authority before whom the affidavit was made.

142. No affidavit is to be deemed sufficient which has been sworn before the party on whose behalf the same is offered, or before his or her proctor, solicitor or attorney, or before a partner or clerk of his or her proctor, solicitor or attorney.

143. Proctors, solicitors and attorneys, and their clerks respectively, if acting for any other proctor, solicitor or attorney, shall be subject to the Rules and Regulations in respect of taking affidavits which are applicable to those in whose stead they are acting.

144. No affidavit can be read or used unless the proper stamps to denote the fees payable on filing the same are delivered with such affidavit.

145. Where a special time is fixed for filing affidavits, no affidavit filed after that time shall be used unless by leave of the Judge Ordinary.

146. The above Rules and Regulations in respect to affidavits shall, so far as the same are applicable, be observed in respect to affirmations and declarations to be read or used in the Court for Divorce and Matrimonial Causes.

#### *Cases for Motion.*

147. Cases for motion are to set forth the style and object of, and the names and descriptions of the parties to, the cause or proceeding before the Court; the proceedings already had in the cause, and the dates of the same; the prayer of the party on whose behalf the motion is made, and briefly, the circumstances on which it is founded.

148. If the cases tendered are deficient in any of the above particulars, the same shall not be received in the Registry without permission of one of the Registrars.

149. On depositing the case in the Registry, and giving notice of the motion, the affidavits in support of the motion, and all original documents referred to in such affidavits, or to be referred to by counsel on the hearing of the motion, must be also left in the Registry; or in case such affidavits or documents have been already filed or deposited in the Registry, the same must be searched for, looked up and deposited with the proper clerk, in order to their being sent with the case to the Judge Ordinary.

150. Copies of any affidavit or documents to be read or used in support of a motion are to be delivered to the opposite parties to the suit who are entitled to be heard in opposition thereto.

#### *Taxing Bills of Costs.*

151. All bills of costs are referred to the Registrars of the principal Registry of the

Court of Probate for taxation, and may be taxed by them, without any special order for that purpose. Such bills are to be filed in the Registry.

*See also Rule 177.*

152. Notice of the time appointed for taxation will be forwarded to the party filing the bill, at the address furnished by such party.

153. The party who has obtained an appointment to tax a bill of costs shall give the other party or parties to be heard on the taxation thereof at least one clear day's notice of such appointment, and shall, at or before the same time, deliver to him or them a copy of the bill to be taxed.

154. When an appointment has been made by a Registrar of the Court of Probate for taxing any bill of costs, and any parties to be heard on the taxation do not attend at the time appointed, the Registrar may nevertheless proceed to tax the bill after the expiration of a quarter of an hour, upon being satisfied by affidavit that the parties not in attendance had due notice of the time appointed.

155. The bill of costs of any proctor, solicitor or attorney will be taxed on his application as against his client, after sufficient notice given to the person or persons liable for the payment thereof, or on the application of such person or persons, after sufficient notice given to the practitioner.

156. The fees payable on the taxation of any bill of costs shall be paid by the party on whose application the bill is taxed, and shall be allowed as part of such bill; but if more than one-sixth of the amount of any bill of costs taxed as between practitioner and client is disallowed on the taxation thereof, no costs incurred in such taxation shall be allowed as part of such bill.

*See also Rule 200.*

157. If an order for payment of costs is required, the same may be obtained by summons, on the amount of such costs being certified by the Registrar.

*See also Rules 178, 179 and 201.*

#### *Wife's Costs.—As amended 14th July, 1875.*

158. After directions given as to the mode of hearing or trial of a cause, or in an earlier stage of a cause by order of the Judge Ordinary, or of the Registrars, to be obtained on summons, a wife who is petitioner, or has entered an appearance as respondent in a cause, may file her bill or bills of costs for taxation as against her husband, and the Registrar to whom such bills of costs are referred for taxation shall, when directions as to the mode of hearing or trial have been

given, ascertain what is a sufficient sum of money to be paid into the Registry, or what is a sufficient security to be given by the husband to cover the costs of the wife of and incidental to the hearing of the cause; and shall thereupon issue an order upon the husband to pay or secure the said sum within a time to be fixed by the Registrar; provided that in case the husband should by reason of his wife having separate property, or for other reasons, dispute her right to recover any costs pending suit against him, the Registrar may suspend the order to pay the wife's taxed costs, or to pay or secure the sum ascertained to be sufficient to cover her costs of and incidental to the hearing of the cause, for such length of time as shall seem to him necessary to enable the husband to obtain the decision of the Court as to his liability.

159. When on the hearing or trial of a cause the decision of the Judge Ordinary or the verdict of the jury is against the wife, no costs of the wife of and incidental to such hearing or trial shall be allowed as against the husband, except such as shall be applied for, and ordered to be allowed by the Judge Ordinary, at the time of such hearing or trial.

*See also Rule 201.*

#### *Summonses.*

160. A summons may be taken out by any person in any matter or suit depending in the Court for Divorce and Matrimonial Causes, provided there is no rule or practice requiring a different mode of proceeding.

161. The name of the cause or matter, and of the agent taking out the summons, is to be entered in the summons book, and a true copy of the summons is to be served on the party summoned one clear day at least before the summons is returnable, and before 7 o'clock p.m. On Saturdays the copy of the summons is to be served before 2 o'clock p.m.

162. On the day and at the hour named in the summons the party taking out the same is to present himself with the original summons at the Judge's chambers, or elsewhere appointed for hearing the same.

163. Both parties will be heard by the Judge Ordinary, who will make such order as he may think fit, and a minute of such order will be made by one of the Registrars in the summons book.

*See also Rules 181 to 184.*

164. If the party summoned do not appear after the lapse of half an hour from the time named in the summons, the party taking out the summons shall be at liberty to go before the Judge Ordinary, who will thereupon make such order as he may think fit.

165. An attendance on behalf of the party summoned for the space of half an hour, if the party taking out the summons do not during such time appear, will be deemed sufficient, and bar the party taking out the summons from the right to go before the Judge Ordinary on that occasion.

166. If a formal order is desired, the same may be had on the application of either party, and for that purpose the original summons, or the copy served on the party summoned, must be filed in the Registry. An order will thereupon be drawn up, and delivered to the person filing such summons or copy.

167. If a summons is brought to the Registry, with consent to an order indorsed thereon, signed by the party summoned, or by his proctor, solicitor or attorney, an order will be drawn up without the necessity of going before the Judge Ordinary; provided that the order sought is in the opinion of the Registrar one which, under the circumstances, would be made by the Judge Ordinary.

168. The same Rules and Regulations shall, so far as applicable, be observed in respect to summonses which may be heard and disposed of by the Registrars.

#### *Payment of Money out of Court.*

169. Persons applying for payment of money out of Court are to bring into the Registry a notice in writing setting forth the day on which the money applied for was paid into the Registry, the minute entered in the Court books on receiving the same, the date and particulars of the order for payment to the applicant. In case the money applied for be in payment of costs, the notice must also set forth the date of filing the bill for taxation, and of the Registrar's certificate.

170. The above notice must be deposited in the Registry two clear days at least before the money is paid out, and is, in that interval, to be examined by one of the clerks of the Registry with the original entries in the Court books and the bills of costs referred to in it, and certified by such clerk to be correct.

171. When the Court is not sitting, payment of money out of Court will be made only on such day or days of the week as may be fixed by the Registrars, notice whereof will be given in the Registry.

#### *Registries and Officers.*

172. The Registry of the Court for Divorce and Matrimonial Causes, and the clerks employed therein, shall be subject to and under

the control of the Registrars of the principal Registry of the Court of Probate.

173. The record keepers, the sealer and other officers of the principal Registry of the Court of Probate shall discharge the same or similar duties in the Court for Divorce and Matrimonial Causes, and in the Registry thereof, as they discharge in the Court of Probate and the principal Registry thereof.

*Proceedings under "The Legitimacy Declaration Act, 1858."*

174. The above Rules and Regulations, so far as the same may be applicable, shall extend to applications and proceedings under "The Legitimacy Declaration Act, 1858."

ADDITIONAL RULES.—30TH JANUARY, 1869.

*Restitution of Conjugal Rights.*

175. The affidavit filed with the petition, as required by Rule 2, shall further state sufficient facts to satisfy one of the Registrars that a written demand for cohabitation and restitution of conjugal rights has been made by the petitioner upon the party to be cited, and that after a reasonable opportunity for compliance therewith, such cohabitation and restitution of conjugal rights have been withheld.

176. At any time after the commencement of proceedings for restitution of conjugal rights, the respondent may apply by summons to the Judge, or to the Registrars in his absence, for an order to stay the proceedings in the cause by reason that he or she is willing to resume or to return to cohabitation with the petitioner.

*As to Costs.*

177. In all cases in which the Court at the hearing of a cause condemns any party to the suit in costs, the proctor, solicitor or attorney of the party to whom such costs are to be paid, may forthwith file his bill of costs in the Registry, and obtain an appointment for the taxation, provided that such taxation shall not take place before the time allowed for moving for a new trial or rehearing shall have expired; or, in case a rule *nisi* should have been granted, until the rule is disposed of, unless the Judge Ordinary shall, for cause shewn, direct a more speedy taxation.

178. Upon the Registrar's certificate of costs being signed, he shall at once issue an order of the Court for payment of the amount within seven days.

*See also Rules from 151 to 158, and 201.*

179. This order shall be served on the proctor, solicitor or attorney of the party

liable [or if it is desired to enforce the order by attachment, on the party himself], and if the costs be not paid within the seven days, a writ of *fiery facias* or writ of sequestration shall be issued as of course in the Registry, upon an affidavit of service of the order and non-payment.

*See also Rules 110, 111 and 203.*

*As to Subpoenas.*

180. The issuing of fresh subpoenas in each term shall be abolished, and it shall not be necessary to serve more than one subpoena upon any witness.

DEBTORS ACT, 1869.

ADDITIONAL RULE.—15TH FEBRUARY, 1870.

180A.—In pursuance of "The Debtors Act, 1869," it is ordered that, on and after this date, the following Rules shall be in force for regulating the practice under and carrying into effect the first part of the said "Debtors Act, 1869":—

(1) All applications to commit to prison under section 5 shall, in the first instance, be made by summons before the Judge Ordinary, which shall specify the date and other particulars of the order for non-payment of which the application is made, together with the amount due, and be indorsed with the name and place of abode or office of business of the proctor or attorney actually suing out the summons; and in case such attorney shall not be an attorney of this Court, then also with the name and place of abode or office of business of the attorney in whose name such summons shall be taken out; and when the attorney actually suing out such summons shall sue out the same as agent for an attorney in the country, the name and place of abode of such attorney in the country shall also be indorsed upon the said summons; and in case no attorney shall be employed to issue the summons, then it shall be indorsed with a memorandum expressing that the same has been sued out by the petitioner or respondent or co-respondent in person, as the case may be, mentioning the city, town or parish, and also the name of the hamlet, street and number of the house of such petitioner's, respondent's or co-respondent's residence, if any such there be.

(2) The service of the summons, whenever it may be practicable, shall be personal; but if it appear to the Judge Ordinary that reasonable efforts have been made to effect personal service, and either that the summons has come to the knowledge of the debtor, or

that he wilfully evades service, an order may be made as if personal service had been effected upon such terms as to the Judge Ordinary may seem fit.

(3) Proof of the means of the debtor shall, whenever practicable, be given by affidavit; but if it appear to the Judge Ordinary either before or at the hearing that a *viva voce* examination, either of the debtor or of any other person, or the production of any document, is necessary or expedient, an order may be made commanding the attendance of any such person before the Judge Ordinary at a time and place to be therein mentioned, for the purpose of being examined on oath touching the matter in question, (or and) for the production of any such document, subject to such terms and conditions as to the Judge Ordinary may seem fit. The disobedience to any such order shall be deemed a contempt of Court, and punishable accordingly.

(4) The order of committal (which may be in the Form A, in the Appendix, or to the like effect) shall, before delivery to the sheriff, be indorsed with the particulars required by Rule 1 of these Rules. Concurrent orders may be issued for execution in different counties. The sheriff shall be entitled to the same fees in respect thereof as are now payable upon a *ca. sa.*

(5) Upon payment of the sum or sums mentioned in the order (including the sheriff's fees in like manner as upon a *ca. sa.*), the debtor shall be entitled to a certificate in the Form B. in the Appendix, or to the like effect, signed by the proctor or attorney in the cause, of the petitioner, respondent or co-respondent, as the case may be, or signed by the petitioner, respondent or co-respondent, as the case may be, and attested by an attorney or justice of the peace.

(6) The sheriff or other officer named in an order of committal shall within two days after the arrest indorse on the order the true date of such arrest.

#### ADDITIONAL AND AMENDED RULES.— 23RD FEBRUARY, 1875.

181. All summonses heretofore heard by the Registrars of the principal Registry of the Court of Probate in the absence of the Judge Ordinary shall hereafter be heard before one or more of the Registrars at the principal Registry of that Court during the period appointed for the sittings of the Court at Westminster, as well as in the Judge's absence.

182. All Rules and Regulations in respect to summonses now heard before the Judge Ordinary in chambers at Westminster shall, so far as the same are applicable, be observed in respect of the summonses heard before one

or more of the Registrars at the principal Registry.

*See Rules from 160 to 168.*

183. The Registrar before whom the summons is heard will direct such order to issue as he shall think fit, or refer the matter at once to the Judge Ordinary.

184. Any person heard on the summons objecting to the order so issued under the direction of the Registrars may, subject to any order as to costs, apply to the Judge Ordinary on summons to rescind or vary the same.

#### ADDITIONAL RULES.—14TH JULY, 1875.

##### *Appearance.*

185. Application for leave to enter an appearance after a proceeding has been taken in default, heretofore made to the Judge Ordinary on motion in pursuance of Rule 20, shall hereafter be made by summons before one of the Registrars.

*See also Rule 20.*

##### *Answer.*

186. In case the time allowed for entry of appearance to a citation should be more than eight days after service thereof, a respondent who has entered an appearance may, within fourteen days from the expiration of the time allowed for the entry of appearance, file in the Registry an answer to the petition.

*See also Rule 28.*

##### *General Rule as to Pleadings.*

187. Either of the parties before the Court desiring to alter or amend a pleading may apply by summons to one of the Registrars for an order for that purpose.

*See also Rule 34.*

##### *Evidence taken by Affidavit.*

188. In an undefended cause, when directions have been given that all or any of the facts set forth in the petition be proved by affidavits, such affidavits may be filed in the Registry at any time up to ten clear days before the cause is heard.

*See also Rule 51.*

##### *Alimony.*

189. Application for an order for a further and fuller answer to a petition for alimony, heretofore made to the Judge Ordinary on motion in pursuance of Rule 86, shall hereafter be made by summons before one of the Registrars.

*See Rule 86.*

190. A wife who has obtained a final decree of judicial separation, on such decree being affirmed on appeal, or after the expiration of the time for appealing against the

decree if no appeal be then pending, may apply to the Court by petition for an allotment of permanent alimony, though no alimony shall have been allotted to her pending suit, and the Rules from 84 to 88, both inclusive, of the Rules and Regulations for this Court, bearing date 26th December, 1865, relating to petitions for alimony pending suit as varied by these and other Additional Rules and Regulations shall, so far as the same are applicable, be observed in respect to the proceedings upon such petitions for permanent alimony.

*See also* Rules 84 to 88, and 91 and 92.

191. All applications for an allotment of alimony pending suit, and for an allotment of permanent alimony heretofore made to the Court by motion in pursuance of Rules 89 and 91, shall hereafter be referred to one of the Registrars at the principal Registry, who shall investigate the averments in the petition for alimony, answer and reply, in the presence of the parties, their proctors, solicitors or attorneys, and who, if he think fit, shall be at liberty to require the attendance of the husband for the purpose of being examined or cross-examined, and to take the oral evidence of witnesses, and to require the production of any documents or to call for affidavits, and shall direct such order to issue as he shall think fit, or refer the application, or any question arising out of it, to the Judge Ordinary for his decision.

*See* Rules 89 and 91.

192. Any person heard on the reference as to alimony before one of the Registrars, objecting to the order issued under his direction, may (subject to any order as to costs) apply to the Judge Ordinary on summons to rescind or vary the same.

#### *Dismissal of Petition.*

193. When an order has been made for the dismissal of a petition on payment of costs, the cause will not be removed from the list of causes in the Court books without an order of one of the Registrars, to obtain which it must be shewn to his satisfaction the costs have been paid.

#### *Decree Absolute.*

194. In case application by motion to make absolute a decree *nisi* for the dissolution of a marriage should from any cause be deferred beyond six days from the time when the affidavit required by Rule 80 is filed with the case for motion, it must be shewn by further affidavit that search has been made in the proper books up to within six clear days of the motion for decree absolute being heard, and that at such time no person had obtained

leave to intervene, and that no appearance had been entered nor any affidavits filed on behalf of any person wishing to shew cause against the decree *nisi* being made absolute; and in case leave to intervene had been obtained, or appearance entered or affidavits filed on behalf of any such person, it must also be shewn by such further affidavit what proceedings (if any) have been taken thereon.

*See also* Rules 80 and 207.

#### *Custody, Maintenance and Education of Children.*

195. Rules from 97 to 102, both inclusive, of the Rules and Regulations for this Court, bearing date 26th December, 1865, shall, so far as the same are applicable, be observed in respect to applications by petition, after a final decree in a cause, for orders and provision with respect to the custody, maintenance and education of children, the marriage of whose parents was the subject of the decree under the authority given to the Court by 22 & 23 Vict. c. 61. s. 4.

*See* Rules 97 to 102.

#### *Persons of Unsound Mind.*

196. A committee duly appointed of a person found by inquisition to be of unsound mind may take out a citation and prosecute a suit on behalf of such person as a petitioner, or enter an appearance, intervene or proceed with the defence on behalf of such person as a respondent; but if no committee should have been appointed, application is to be made to one of the Registrars, who will assign a guardian to the person of unsound mind, for the purpose of prosecuting, intervening in or defending the suit on his or her behalf; provided that if the opposite party is already before the Court when the application for the assignment of a guardian is made, he or she shall be served with notice by summons of such application.

#### *Protection Orders.*

197. In the affidavit in support of an application on the part of a wife deserted by her husband for an order to protect her earnings and property acquired since the commencement of such desertion, the applicant must state whether she has any knowledge of the residence of her husband; and if he is known to be residing within the jurisdiction of the Court, he must be served personally with a summons to shew cause why such order should not be made.

*See also* Rule 124.

*Commission and Requisitions for Examination of Witnesses.*

198. The Registrar to whom a commission or requisition for examination of witnesses is referred for settlement, on application on behalf of the wife, may proceed at once and without summons to ascertain what is a sufficient sum of money to be paid or secured to her to cover her expenses in attending at the examination of such witnesses, and shall thereupon issue an order upon the husband to pay or secure the said sum within a time to be fixed in such order.

*See also Rule 137.*

*Costs.*

199. The bond taken to secure the costs of a wife of and incidental to the hearing of a cause shall be filed in the Registry of the Court of Probate, and shall not be delivered out or be sued upon without the order of the Court.

200. If more than one-sixth of the amount of any bill of costs taxed as between practitioner and client is disallowed on taxation thereof, the party on whose application the bill is taxed shall be at liberty to deduct the costs incurred by him in the taxation from the amount of the bill as taxed, if so much remains due, otherwise the same shall be paid by the practitioner to the person on whose application the bill is taxed.

*See also Rule 156.*

201. The order for payment of costs of suit in which a respondent or co-respondent has been condemned by a decree *nisi* shall, if applied for before the decree *nisi* is made absolute, direct the payment thereof into the Registry of the Court of Probate, and such costs shall not be paid out of the said Registry to the party entitled to receive them under the decree *nisi* until the decree absolute has been obtained; but a wife who is unsuccessful in a cause, and who at the hearing of the cause has, in pursuance of Rule 159, obtained an order of the Judge Ordinary that her costs of and incidental to the hearing or trial of the cause shall be allowed against her husband to the extent of the sum paid or secured by him to cover such costs, may nevertheless proceed at once to obtain payment of such costs after allowance thereof on taxation.

*See also Rules 157, 178 and 179.*

**ADDITIONAL RULES.—17TH APRIL, 1877.**

*Shewing Cause against a Decree Nisi.*

202. When the Queen's Proctor desires to shew cause against making absolute a decree *nisi* for dissolution or nullity of marriage, he

shall enter an appearance in the cause in which such decree *nisi* has been pronounced, and shall within fourteen days after entering appearance file his plea in the Registry, setting forth the grounds upon which he desires to shew cause as aforesaid, and on the day he files his plea in the Registry, shall deliver a copy thereof to the person in whose favour such decree has been pronounced, or to his or her solicitor, and all subsequent pleadings and proceedings in respect to such plea shall be filed and carried on in the same manner as directed by the existing Rules and Regulations Nos. 68 and 69, in regard to the plea of the Queen's Proctor, filed after obtaining leave to intervene in a cause, and the existing Rules and Regulations from No. 70 to No. 76, both inclusive, shall no longer be applicable to the Queen's Proctor on his shewing cause as aforesaid, save as far as regards any proceedings already commenced in pursuance of the said Rules and Regulations.

*See Rules 68 and 69.*

*Writ of Fieri Facias and other Writs.*

203. In default of payment of any sum of money at the time appointed by any order of the Court for the payment thereof, a writ of *fiери facias*, or writ of sequestration, or writ of *elegit* shall be issued as of course in the Registry, upon an affidavit of service of the order and non-payment.

*See also Rules 110, 111 and 179.*

*Maintenance and Settlements.*

204. The Registrar to whom pleadings are referred for investigation under Rule 101 shall, if he thinks fit, be at liberty to require the attendance of the husband or wife for the purpose of being examined or cross-examined, and to take the oral evidence of witnesses in the same manner as on a reference for an allotment of alimony.

*See Rule 101.*

**ADDITIONAL AND AMENDED RULES.—  
JULY, 1880.**

*Mode of Hearing or Trial.*

205. It shall not be necessary in any case to apply to the Court by motion for directions as to the mode of hearing or trial of a cause. When the pleadings are concluded, the parties to a cause may proceed in all respects as though upon the day of filing the last pleading a special direction had been given by the Court as to the mode of hearing or trial to the effect following:—

1st. In cases in which damages are not claimed that the cause be heard by oral evidence before the Court itself, without a jury.

2nd. In cases in which damages are claimed that the cause be tried before the Court with a common jury.

And any party to a cause may apply by summons for a direction that the cause may be heard or tried otherwise than is hereby provided.

See Rules 40 and 45.

206. Before a cause is set down for hearing or trial, the pleadings and proceedings in the cause shall be referred to one of the Registrars, who shall certify that the same are correct and in order, and the Registrar to whom the same are referred shall cause any irregularity in such pleadings or proceedings to be corrected, or refer any question arising therefrom to the Court for its direction. Any party to the cause objecting to such direction of the Registrar may (subject to any order as to costs) apply to the Court on summons to rescind or vary the same.

#### *Decree Absolute.*

207. Application to make absolute a decree nisi for dissolution or nullity of a marriage need not hereafter be made to the Court by motion as directed by Rules 80 and 194; but it shall be a sufficient compliance with the said rules to file in the Registry, with the affidavit or affidavits therein required, a notice in writing setting forth that application is made for such decree absolute, which will thereupon be pronounced in open Court at a time appointed for that purpose.

See Rules 80 and 194.

#### *Suits in Forma Pauperis.*

208. Applications for leave to prosecute or defend a suit *in forma pauperis* may hereafter be made to one of the Registrars, who will make such order thereon as he may see fit, or refer the application to the Court.

209. The affidavit required by Rule 26, if application is made by a wife to prosecute a suit against her husband *in forma pauperis*, shall state, to the best of her knowledge and belief, the amount of income or means of living of her husband.

See also Rules 25 and 26.

210. When a husband has been admitted to prosecute a suit against his wife *in forma pauperis*, the wife may apply for an order that she be at liberty to proceed with her defence *in forma pauperis*, on production of an affidavit that she has no separate property exceeding 25*l.* in value after payment of her just debts.

211. When a wife has been permitted to prosecute a suit against her husband *in forma pauperis*, the husband may apply for leave to proceed with his defence *in forma pauperis*, on production of an affidavit as to his income or means of living, and shewing that, besides his wearing apparel, he is not worth 25*l.* after payment of his just debts.

#### *Access to Children.*

212. Application on behalf of a husband or wife, parties to a cause, for access to the children of their marriage, may hereafter be made by summons before one of the Registrars, who shall direct such order to issue as he thinks fit, subject to appeal to the Court by either party dissatisfied with the order as authorised by Rule 184.

See also Rules 104 and 184.

## APPENDIX.

## FORMS,

*Which are to be followed as nearly as the circumstances of each case will allow.*

## No. 1.—Petition.

In the High Court of Justice. Probate,  
Divorce and Admiralty Division.

(Divorce.)

To the Right Honourable the President of  
the said Division.

The day of 18 .

The petition of A.B., of , sheweth,—  
1. That your petitioner was on the  
day of 18 , lawfully married to  
C.B., then C.D. [spinster or widow], at the  
Parish Church of &c.

[Here state where the marriage took place.]

2. That after his said marriage your petitioner lived and cohabited with his said wife at and at , and that your petitioner and his said wife have had issue of their said marriage children; to wit:

[Here state the names and ages of the children issue of the marriage.]

3. That on the day of 18 , and on other days between that day and , the said C.B., at in the county of , committed adultery with R.S.:

4. That in and during the months of January, February and March, 18 , the said R.S. frequently visited the said C.D. at , and on divers of such occasions committed adultery with the said C.D.

Your petitioner therefore humbly prays—  
That your Lordship will be pleased to decree:

[Here set out the relief sought.]

And that your petitioner may have such further and other relief in the premises as to your Lordship may seem meet.

[Petitioner's signature.]

## No. 2.—Citation.

In the High Court of Justice. Probate,  
Divorce and Admiralty Division.

(Divorce.)

VICTORIA, by the grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith.

To C.B., of in the county of  
WHEREAS A.B., of &c., claiming to have been lawfully married to has

filed petition against in the Divorce Registry of our said Court, praying

wherein alleges that you have been guilty of adultery [or have been guilty of cruelty towards the said or as the case may be]: NOW THIS IS TO COMMAND YOU, that within eight days after service hereof on you, inclusive of the day of such service, you do appear in our said Court then and there to make answer to the said petition, a copy whereof, sealed with the seal of our said Court, is herewith served upon you. AND TAKE NOTICE, that in default of your so doing, our said Court will proceed to hear the said charge [or charges] proved in due course of law, and to pronounce sentence therein, your absence notwithstanding. And take further notice, that for the purpose aforesaid you are to attend in person, or by your solicitor, at the Divorce Registry of our said Court at Somerset House, Strand, in the county of Middlesex, and there to enter an appearance in a book provided for that purpose, without which you will not be allowed to address the Court, either in person or by counsel, at any stage of the proceedings in the cause.

Dated at London the day of 18 , and in the year of our Reign.

L. S.

(Signed) X.Y., Registrar.

## No. 3.—Præcipe for Citation.

In the High Court of Justice. Probate,  
Divorce and Admiralty Division.

(Divorce.)

Citation for A.B., of , against C.B., of , to appear in a suit for by reason of

(Signed) A.B. in person,  
or

C.D., solicitor, for the said A.B.

[Here insert the address required within three miles of the General Post Office.]

## No. 4.—Certificate of Service.

This citation was duly served by the undersigned G.H. on the within-named C.B. of at on the day of 18 . (Signed) G.H.

No. 5.—*Affidavit of Service of Citation.*

In the High Court of Justice. Probate,  
Divorce and Admiralty Division.

(Divorce.)

*A.B.* against *C.B.* and *E.F.*

I, *C.D.* of &c., make oath and say—  
That the citation, bearing date the  
day of 18 , issued under seal of this  
Court against *C.B.* the respondent [or *R.S.*  
the co-respondent] in this cause and now  
hereunto annexed, marked with the letter  
*A.*, was duly served by me on the said *C.B.*  
(or *R.S.*) at in the county of &c. by  
shewing to h the original under seal, and  
by leaving with h a true copy thereof,  
on the day of 18 . And I  
further make oath and say that I did at the  
same time and place deliver to the said *C.B.*  
(or *R.S.*) personally a certified copy, under  
seal of this Court, of the petition filed in  
this cause.

Sworn at &c. on the }  
day of }  
18 . Before me }

No. 6.—*Entry of an Appearance.*

In the High Court of Justice. Probate,  
Divorce and Admiralty Division.

(Divorce.)

*A.B.*, petitioner, against *C.B.*, respondent,  
and *R.S.*, co-respondent.

The respondent, *C.B.* [or the co-respondent  
*R.S.*], appears in person [or *C.D.*, the  
solicitor for *C.B.*, the respondent (or *R.S.*  
the co-respondent), appears for the said  
respondent or co-respondent].

[Here insert the address required within three  
miles of the General Post Office.]

Entered this day of 18 .

No. 7.—*Answer.*

In the High Court of Justice. Probate,  
Divorce and Admiralty Division.

(Divorce.)

The day of 18 .

*A.B.* v. *C.B.*

The respondent *C.B.*, by *C.D.*, her solicitor  
[or in person], in answer to the petition filed  
in this cause, saith,—

1. That she denies that she committed  
adultery with *R.S.* as set forth in the said  
petition.

2. Respondent further saith, that on the  
day of 18 , and on other  
days between that day and , the

said *A.B.*, at , in the county of  
, committed adultery with *K.L.*

[In like manner respondent is to state con-  
nivance, condonation or other matters  
relied on as a ground for dismissing the  
petition.]

Wherefore this respondent humbly prays—  
That your Lordship will be pleased to  
reject the prayer of the said petition, and  
decree, &c.

No. 8.—*Questions of Fact for the Jury.*

In the High Court of Justice. Probate,  
Divorce and Admiralty Division.

(Divorce.)

*A.B.* against *C.B.* and *R.S.*

*Questions for the Jury.*

1. Whether *C.B.*, the respondent, com-  
mitted adultery with *R.S.*, the co-respondent.

2. Whether *A.B.*, the petitioner, has  
condoned the adultery (if any) committed by  
*C.B.*, the respondent.

3. Whether *A.B.*, the petitioner, has been  
guilty of cruelty towards *C.B.*, the respon-  
dent.

[Here set forth in the same form all the ques-  
tions at issue between the parties.]

4. What amount of damages should be  
paid by *R.S.*, the co-respondent, in respect  
of the adultery (if any) by him committed.

No. 9.—*Act on Petition.*

In the High Court of Justice. Probate,  
Divorce and Admiralty Division.

(Divorce.)

*A.B.* against *C.B.* and *R.S.*

On the day of 18 .

*A.B.*, the petitioner [or *C.D.*, the solicitor  
of *A.B.*, the petitioner], alleged that

[Here state briefly the facts and circumstances  
upon which the petition is founded.]

Wherefore the said *A.B.*, or *C.D.*, refer-  
ring to the affidavits and proofs to be by him  
exhibited in verification of what he so alleged,  
prayed that

[Here set forth the prayer of the Petitioner.]

(Signed) *A.B.*  
or  
*C.D.*

*Answer.*

In the High Court of Justice. Probate,  
Divorce and Admiralty Division.

(Divorce.)

*A.B.* against *C.B.* and *R.S.*

On the day of 18 .

*C.B.*, the respondent [or *G.H.*, the solicitor

of C.B., the respondent], in answer to the allegations in the act on petition, bearing date the       day of       18       , of A.B., admitted [or denied] that

[Here set forth any allegations admitted or denied.]

And he alleged that

[Here state any facts or circumstances in explanation or in answer.]

Wherefore the said C.B., or G.H., referring to the affidavits and proofs to be by her exhibited in verification of what she so alleged, prayed

[Here state the prayer of respondent.]

(Signed) C.B.

or  
G.H.

#### Conclusion.

A.B. against C.B. and R.S.

On the       day of       18       .

A.B., the petitioner [or C.D., the solicitor for A.B., the petitioner], in reply to the allegations of C.B. [or G.H.] in her answer, bearing date       denied the same in great part to be true or relevant. Wherefore he alleged and prayed as before.

(Signed) A.B.

or  
C.D.

#### No. 10.—Petition for Reversal of Decree.

In the High Court of Justice. Probate, Divorce and Admiralty Division.

(Divorce.)

To the Right Honourable the President of the said Division.

The       day of       18       .

The petition of A.B., of       , sheweth,—

1. That your petitioner was on the day of       18       , lawfully married to C.B., then C.D., spinster [or widow], at the parish of, &c.

[Here state where the marriage took place.]

2. That on the       day of       your Lordship, by your final decree, pronounced in a cause then depending in this Court, entitled C.B. against A.B., decreed as follows, to wit:

[Here set out the decree.]

3. That the aforesaid decree was obtained in the absence of your petitioner, who was then residing at

[State facts tending to shew that the petitioner did not know of the proceedings;

and further, that had he known of them he might have offered a sufficient defence.]

or

That there was reasonable ground for your petitioner leaving his said wife, for that his said wife

[Here state any legal grounds justifying the petitioner's separation from his wife.]

Your petitioner therefore humbly prays—

That your Lordship will be pleased to reverse the said decree.

#### No. 11.—Appeal.

I, A.B., the petitioner [or C.D., the solicitor of A.B., the petitioner], in a suit lately depending in the Probate, Divorce and Admiralty Division of the High Court of Justice, entitled A.B. against C.D. and R.S., do hereby, in due time and place, complain of and appeal against a certain order or decree made in the said cause by the Right Honourable the President of the said Division on the day of       18       . Whereby, amongst other things, the said President did order and decree [here set forth the whole of the decree, or such part of it as may be appealed against.]

(Signed) A.B.

or  
C.D.

This instrument of appeal was lodged in the Divorce Registry of the Probate, Divorce and Admiralty Division of the High Court of Justice, this       day of       18       .

To be signed by a clerk in the Registry.

#### No. 12.—Affidavit in support of Application for Decree Absolute.

In the High Court of Justice. Probate, Divorce and Admiralty Division.

(Divorce.)

A.B. against C.B. and R.S.

I, C.D. of &c., solicitor for A.B., the petitioner in this cause, make oath and say, that on the       day of       18       , I carefully searched the books kept in the Divorce Registry of this Court for the purpose of entering appearances, from and including the       day of       18       , the day of the date of the decree nisi made in this cause, to the       day of       18       , and that during such period no appearance has been entered in the said books by Her Majesty's Procurator-General, or by or on behalf of any other person or persons whomsoever. And I further make oath and say,

that I have also carefully searched the books kept in the said Registry for entering the minutes of proceedings had in this cause from and including the said day of 18 , to the day of 18 , and that no leave has been obtained by Her Majesty's Procurator-General, or by any other person or persons whomsoever, to intervene in this cause, and that no affidavit or affidavits, instruments or other documents whatsoever, have been filed in this cause by Her Majesty's Procurator-General, or any other persons whomsoever, during such period, or at any other period during the dependence of this cause, in opposition to the said decree nisi being made absolute.

Sworn at *etc.*, on the  
day of  
18 , before me, }

#### No. 13.—*Petition for Alimony.*

To the Right Honourable the President of the Probate, Divorce and Admiralty Division of the High Court of Justice.

*A.B.* against *C.B.* and *R.S.*

The day of 18 .

The petition of *C.B.*, the lawful wife of *A.B.*, sheweth—

1. That the said *A.B.* does now carry on and has for many years past carried on the business of a at , and from such business he derives the net annual income of £

2. That the said *A.B.* is now or lately was possessed of or entitled to proprietary shares of the Railway Company, amounting in value to £ , and yielding a clear annual dividend of £

3. That the said *A.B.* is possessed of certain stock-in-trade in his said business of a of the value of £

[*In same manner state particulars of any other property which the husband may possess.*]

Your petitioner therefore humbly prays—

That your Lordship will be pleased to decree her such sum or sums of money by way of alimony *pendente lite* [or permanent alimony] as to your Lordship shall seem meet.

#### No. 14.—*Election of a Guardian.*

*By a Petitioner.*

Whereas a suit is about to be instituted in the Probate, Divorce and Admiralty Division of our High Court of Justice, on behalf of *A.B.* against *C.B.* (the wife of the said *A.B.*), and *R.S.* And whereas the said *A.B.*

is now a minor of the age of years and upwards, but under the age of twenty-one years, and therefore by law incapable of acting in his own name.

Now I, the said *A.B.*, do hereby make choice and elect *G.H.*, my natural and lawful father and next-of-kin, to be my curator or guardian for the purpose of instituting the said suit, and for the purpose of carrying on and prosecuting the same until a final decree shall be given and pronounced therein, or until I shall attain the age of twenty-one years, and I hereby appoint *C.D.* of *etc.*, my solicitor to file or cause to be filed this my election for me in the Divorce Registry of the said Division.

In witness whereof I have hereunto set my hand and seal this day of in the year 18 .

(Signed) *A.B.* (l.s.)

Signed, sealed and delivered

by the within-named *A.B.*

in the presence of

*One attesting witness.*

*By a Respondent.*

Whereas a citation bearing date the day of 18 has issued under seal of the High Court of Justice, Probate, Divorce and Admiralty Division, at the instance of *A.B.*, claiming to have been lawfully married to *C.B.*, citing the said *C.B.* to appear in the said Court, and then and there to make answer to a certain petition of the said *A.B.* filed in the Divorce Registry of the said Court. And whereas the said *C.B.* is now a minor of the age of years and upwards, but under the age of twenty-one years, and therefore by law incapable of acting in her own name.

Now I, the said *C.B.*, do hereby make choice of and elect *G.H.*, my natural and lawful father and next-of-kin, to be my curator or guardian for the purpose of entering an appearance for me and on my behalf in the said Court, and for the purpose of making answer for me to the said petition, and of defending me in the said cause, and to abide for me in judgment until a final decree shall be given and pronounced therein, or until I shall attain the age of twenty-one years, and I hereby appoint, *etc.*

FORMS OF SUBPENAS IN ADDITIONAL RULES  
DATED 30TH JANUARY, 1869.

#### No. 15.—*Subpoena ad Testificandum.*

VICTORIA, by the grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, to

[names of all witnesses included in the subpoena to be inserted], Greeting. We command you and every of you to be and appear in your proper persons before the Right Honourable Sir James Hannen, Knight, the President of the Probate, Divorce and Admiralty Division of our High Court of Justice, at Westminster, in our county of Middlesex, on the day of , 18 , by half-past ten of the clock in the forenoon of the same day, and so from day to day whenever the said Division of our said Court is sitting, until the cause or proceeding is heard, to testify the truth, according to your knowledge, in a certain cause now in our said Court before our said Judge depending between *A.B.*, petitioner, and *C.B.*, respondent, and *R.S.*, co-respondent, on the part of the petitioner or respondent, or co-respondent [or as the case may be], and on the aforesaid day between the parties aforesaid to be heard. And this you, or any of you, shall by no means omit, under the penalty of each of you of 100*l.* Witness, the Right Honourable Sir James Hannen, Knight, at our High Court of Justice, the day of , 18 , in the year of our reign.

(Signed) X.Y., Registrar.

Subpoena issued by  
Solicitor for the

N.B.—Notice will be given to you of the day on which your attendance will be required.

#### No. 16.—*Præcipe for Subpoena ad Testificandum.*

In the High Court of Justice. Probate, Divorce and Admiralty Division.  
(Divorce.)

Subpoena for [insert witnesses' names], to testify between *A.B.*, petitioner, *C.B.*, respondent and *R.S.*, co-respondent, on the part of the petitioner [or respondent or co-respondent].

(Signed)  $\left\{ \begin{array}{l} A.B. \\ C.B. \\ R.S. \end{array} \right\}$  or  $\left\{ \begin{array}{l} P.A., \text{ petitioner's} \\ \text{or respondent's} \\ \text{or co-respondent's} \end{array} \right\}$  solicitor.

#### No. 17.—*Subpoena duces tecum.*

VICTORIA, by the grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, to [names of all parties included in the subpoena to be inserted], Greeting. We command you and every of you to be and appear in your proper persons before the Right Honourable Sir

James Hannen, Knight, President of the Probate, Divorce and Admiralty Division of our High Court of Justice at Westminster, in our county of Middlesex, on

day of 18 , by eleven of the clock in the forenoon of the same day, and so from day to day whenever the said Division of our said Court is sitting until the cause or proceeding is heard, and also that you bring with you, and produce at the time and place aforesaid [here describe shortly the deeds, letters, papers, &c., required to be produced], then and there to testify and shew all and singular those things which you or either of you know, or the said deed or instrument doth import, of and concerning a certain cause or proceeding now in the said Court before our said Judge, depending between *A.B.*, petitioner, and *C.D.*, respondent, and *R.S.*, co-respondent, on the part of the petitioner [or the respondent or co-respondent, as the case may be], and on the aforesaid day between the parties aforesaid to be heard. And this you or any of you shall by no means omit, under the penalty of each of you of 100*l.* Witness, the Right Honourable Sir James Hannen, Knight, President of the Probate, Divorce and Admiralty Division of our High Court of Justice, the day of 18 , in the year of our reign.

(Signed) X.Y., Registrar.

Subpoena issued by  
Solicitor for the

N.B.—Notice will be given to you of the day on which your attendance will be required.

#### No. 18.—*Præcipe for Subpoena duces tecum.*

In the High Court of Justice. Probate, Divorce and Admiralty Division.  
(Divorce.)

Subpoena for to testify and produce, &c., between *A.B.*, petitioner, *C.D.*, respondent, and *R.S.*, co-respondent, on the part of the petitioner [or respondent or co-respondent].

(Signed)  $\left\{ \begin{array}{l} A.B. \\ C.B. \\ R.S. \end{array} \right\}$  or  $\left\{ \begin{array}{l} P.A., \text{ petitioner's} \\ \text{or respondent's} \\ \text{or co-respondent's} \end{array} \right\}$  solicitor.

#### No. 19.—*Application for a Protection Order.*

To the Right Honourable the President of the Probate, Divorce and Admiralty Division of the High Court of Justice.

The application of *C.B.*, of the lawful wife of *A.B.*, sheweth,—

That on the            day of            she was lawfully married to A.B. at

That she lived and cohabited with the said A.B. for            years at           , and also at           , and hath had            children, issue of her said marriage, of whom            are now living with the applicant, and wholly dependent upon her earnings.

That on or about            the said A.B., without any reasonable cause, deserted the applicant, and hath ever since remained separate and apart from her.

That since the desertion of her said husband the applicant hath maintained herself by her own industry, and hath thereby and otherwise acquired certain property [or hath become possessed of certain property], consisting of [here state generally the nature of the property].

Wherefore the said C.B. prays an order for the protection of her earnings and property acquired since the said            day of           , from the said A.B., and from all creditors and persons claiming under him.

(Signed) C.B.

No. 20.—*Commission or Requisition for Examination of Witnesses.*

In the High Court of Justice. Probate, Divorce and Admiralty Division.

(Divorce.)

VICTORIA, by the grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, to [here set forth the name and proper description of the Commissioner], Greeting. Whereas a certain cause is now depending in the Probate, Divorce and Admiralty Division of our High Court of Justice between A.B., petitioner, and C.B., respondent, and R.S., co-respondent, wherein the said A.B. has filed his petition praying for a dissolution of his marriage with the said C.B. [or otherwise as in the prayer of the petition]. And whereas, by an order made in the said cause on the            day of            18           , on the application of the said A.B., it was ordered that a commission [or requisition] should issue under seal of our said Court for the examination of [here insert name and address of one of the persons to be examined] and others as witnesses to be produced on the part of the said A.B., the petitioner, in support of his said petition (saving all just exceptions). Now know ye that we do, by virtue of this commission [or requisition] to you directed, authorise [or request] you, within thirty days after the receipt of this commission [or requi-

sition], at a certain time and place to be by you appointed for that purpose, with power of adjournment to such other time and place as to you shall seem convenient, to cause the said witnesses to come before you, and to administer to the said witnesses respectively an oath truly to answer such questions as shall be put to them touching the matters set forth in the said petition (a true and authentic copy whereof, sealed with the seal of our said Court, is hereunto annexed); and such oath being administered, we do hereby authorise [or request] and empower you to take the examination of the said witnesses touching the matters set forth in the said petition, and to reduce the said examination or cause the same to be reduced into writing. And that for the purpose aforesaid you do assume to yourself some notary public or other lawful scribe as and for your actuary in that behalf, if to you it should seem meet and convenient so to do. And the said examination being so taken and reduced into writing as aforesaid, and subscribed by you, we do require [or request] you forthwith to transmit the said examination, closely sealed up, to the Divorce Registry of our said Court at Somerset House, Strand, in the county of Middlesex, together with these presents. And we do hereby give you full power and authority to do all such acts, matters and things as may be necessary, lawful and expedient for the due execution of this our commission [or requisition].

Dated at London the            day of            in the year of our Lord One thousand eight hundred and            and in the year of our reign.

(Signed) X.Y., Registrar.

No. 21.—*Bond for securing Wife's Costs in Amended Rules dated 14th July, 1875.*

KNOW all men by these presents, that we, A.B., of &c., G.H., of &c., and K.L., of &c., are held and firmly bound unto X.Y., of           , the proctor or solicitor for

of           , in the penal sum of            pounds of good and lawful money of Great Britain, to be paid to the said X.Y., and for which payment to be well and truly made we bind ourselves and each of us for the whole, our heirs, executors or administrators, firmly by these presents. Sealed with our seals.

Dated the            day of           , in the year of our Lord 18           .

Whereas a certain cause is now depending

in the Probate, Divorce and Admiralty Division of the High Court of Justice between the said *A.B.*, petitioner, of the one part, and the said *C.D.*, respondent, and *R.S.*, co-respondent, of the other part. And whereas, by an order made in the said cause, it was ordered that the said *A.B.*, the petitioner [or the said *C.D.*, the respondent] should within            days from the service thereof pay or cause to be paid into the Divorce Registry of the said Division the sum of            pounds to cover the costs of the said respondent [or petitioner] of and incidental to the hearing of the said cause, or file in the said Registry a bond under the hand and seal of the said *A.B.*, and of two sufficient sureties in the penal sum of            pounds, conditioned for the payment of such costs of the said *C.D.*, as shall be certified to be due and payable by the said *A.B.*, not exceeding the sum of            pounds, as security for the costs aforesaid. Now the condition of this obligation is such that if the above-bounden *A.B.*, his heirs, executors or administrators, shall well and truly pay or cause to be paid to the above-named *X.Y.*, his heirs, executors, administrators or assigns, the full sum of            of good and lawful money of Great Britain, or the lawful costs of the said *C.D.*, the respondent [or petitioner], of and incidental to the hearing and trial of this cause to the extent of            pounds, then this obligation is to be void and of none effect, otherwise to remain in full force and virtue.

Sealed and delivered by  
the said *A.B.*, *G.H.* and            *A.B.* (L.S.)  
*K.L.*, in the presence            *G.H.* (L.S.)  
of            *K.L.* (L.S.)  
of

*One attesting witness.*

FORMS A. AND B. ANNEXED TO ADDITIONAL  
RULE, 15th FEBRUARY, 1870.

A.

Upon hearing, &c. [*christian and surname of the debtor and party claiming*] I do order, that the said *A.B.* be, for default of payment of the debt hereinafter mentioned, committed to prison for the term of weeks from the date of his arrest, including the day of such date, or until he shall pay £           , being the amount of [*here state the particulars of the debt or liability*], and which the said *A.B.* was on the            day of            ordered by the Court for Divorce and Matrimonial Causes to pay to the said            [or, into the registry of the said Court], together with £            for costs of this order, and Sheriff's fees for the execution thereof, and I order that the Sheriff of            do take the said *A.B.* for the purpose aforesaid, if he shall be found within his bailiwick.

Dated, &c.

B.

I certify, that *A.B.*, now in the gaol of            upon an order of the Judge Ordinary of Her Majesty's Court for Divorce and Matrimonial Causes, at the suit of *C.D.* for non-payment of a debt of            has satisfied the said debt, together with the costs mentioned in the said order.

Dated, &c.

*E.F.*, of, &c.,

Proctor or Attorney for the said *C.D.*,

or

*C.D.*, of, &c.

Witness to the signature of *C.D.*,

*G.H.*, his Attorney,

or

*I.K.* Justice of the Peace for

THE  
LAW JOURNAL REPORTS

FOR  
THE YEAR 1880:

CASES

DECIDED BY THE  
JUDICIAL COMMITTEE AND THE LORDS OF  
Her Majesty's Privy Council,

REPORTED BY  
EDWARD BULLOCK, Esq., BARRISTER-AT-LAW.

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MICHAELMAS, 1879, to MICHAELMAS, 1880.



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PRIVY COUNCIL, VOL. XLIX.

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MDCCCLXXX.



CASES ARGUED AND DETERMINED  
IN THE COURT OF  
THE JUDICIAL COMMITTEE AND THE LORDS OF  
**Her Majesty's Privy Council.**

MICHAELMAS 1879 TO MICHAELMAS 1880.

43 *Victoria.*

1879. { DAVID BELL (*appellant*) v. THE  
Nov. 22. { CORPORATION OF QUEBEC (*respondents*).

*Canada—Quebec—Old French Law—Eaux Navigables—Droits des Eaux—Riparian Owner—Droits d'accès et de Sortie—Action Privée.*

*By the old French law the question whether a river is navigable or not is one of fact, depending on how far it can be used for purposes of traffic.*

*The appellant was the owner of land abutting on a river navigable for small craft. The respondents, under statutory powers, constructed a bridge across the river and thereby impeded the navigation for masted craft. The access to the appellant's land was not affected:—Held, that in the absence of special damage no action would lie by the appellant as a riparian owner.*

This was an appeal from a judgment of the Court of Queen's Bench for the province of Quebec, Canada, affirming a judgment of the Superior Court of that province.

The action was brought by the appellant to obtain the demolition and removal of a bridge constructed by the respondents, on the ground that the works obstructed a navigable river, and to recover damages for the injury sustained.

The appellant was the owner of land situate about two miles from the city of

Quebec, having a frontage upon the river St. Charles, which is a tributary of the St. Lawrence.

In 1873 the respondents under powers conferred on them by several statutes constructed a bridge and an aqueduct across the river at a point a few yards below the appellant's property. The work obstructed the navigation of the river for boats carrying masts.

The appellant, on the 3rd of August, 1874, commenced an action for a nuisance and obstruction, and prayed that the bridge might be demolished and removed, and claimed damages. The respondents pleaded the general issue, and by perpetual exception set out several statutes granting them permission to erect works for the purpose of supplying water to the city of Quebec, and for that purpose granting them power to expropriate property.

The action was tried, and upon the 8th of November, 1876, judgment was delivered, dismissing the action with costs.

From this judgment the appellant appealed to the Court of Queen's Bench of the province. The case was heard on the 8th of February, 1877; when that Court affirmed the judgment of the Court below.

From this judgment the present appeal was brought.

*Mr. Benjamin* and *Mr. Mathew*, for the appellant.—The river was navigable,

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but even if the river was not navigable for all purposes, the appellant being a riparian owner had a right to the free use of the waterway. If such right was impaired by the works executed by the respondents, the appellant is entitled to damages. The statutes under which the works were constructed did not empower the respondents to interfere with navigation. The appellant is also entitled to have the bridge removed. They referred to *Dalloz*, Rep. vol. 19; *vo Eaux*, No. 35, c. 2. s. 1; vol. 44. p. 2. p. 740; *vo Voirie par Eau*, c. 2. s. 2. p. 77. s. 53; *Houck on Navigable Rivers*, par. 13; *Code Civil*, Art. 400; 1 *Wodon*, *Droits des Eaux*, par. 23, p. 75, 81; *Phear on Rights of Water*, p. 53; *Curasson*, *Traité des Actions Possessoires*, p. 163; *Pothier*, *Pand*, liv. 8. ti. 1, No. 8, note 5; *Proudhon*, *Domain Public*, vol. 3. p. 192. No. 820; 9 *Larombrière*, No. 566, 567; *Angell on Watercourses*, s. 567; *Miles v. Rose* (1); *M'Bean v. Carlisle* (2); *The Mayor of Montreal v. Drummond* (3); *Beckett v. The Midland Railway Company* (4); *The Metropolitan Board of Works v. M'Carthy* (5); *Lyon v. The Fishmongers' Company* (6).

*Mr. Bompas and Mr. Rigby*, for the respondents.—The appellant failed to prove that he had sustained actual damage. The respondents were authorised by statute to construct the works. They are not liable at the suit of a private person for their act. The river was not navigable. But if the river was navigable, and such navigation is to some degree obstructed, no action will lie at the suit of a riparian owner unless the access to his land has been affected or unless special damage is proved. They referred to *Abbot's New York Digest*, vol. 1. p. 79; *Arnold v. The Hudson River* (7); *In re Furman Street* (8); *In re*

*William Street* (9); *The Troy and Boston Railway v. Lee* (10); *The Canal Appraisers v. Tibbits* (11); *Gould v. Hudson* (12); *Radcliff v. Brooklyn* (13); *Sweet v. Troy* (14); *The British Plate Manufacturers v. Meredith* (15); *Sutton v. Olark* (16); *Dore v. Gray* (17); *The Queen v. The British Dock Company* (18); *Harman v. Tappenden* (19); *Roberts v. Reid* (20); *Hall v. Smith* (21); *Warburton v. The Blackwall Railway Company* (22); *The King v. Montague* (23); *The King v. The Nottingham Waterworks Company* (24); and to *Angell on Highways*, s. 210; *Angell on Tidewaters*, p. 66.

SIR MONTAGUE SMITH delivered the judgment of their Lordships (25).

This is an appeal from the judgment of the Court of Queen's Bench for the province of Quebec, which affirmed the judgment of the Superior Court of the province, dismissing the appellant's action.

The action was brought for damages, and to obtain the demolition of a bridge, constructed by the corporation of Quebec, across the little river St. Charles, a tributary of the St. Lawrence, on the ground that the bridge obstructed the navigation of the river, and thereby caused damage to the appellant, as the owner of riparian land.

The bridge was built to carry an aqueduct, and formed a part of the works constructed by the corporation to carry water to Quebec for the use of the inhabitants.

The corporation was authorised to con-

- (1) 5 Taun. 705.
- (2) 19 Low Car. Ju. 276.
- (3) 45 Law J. Rep. P.C. 33; Law Rep. 1 App. Cas. 381.
- (4) 37 Law J. Rep. C.P. 11; Law Rep. 3 C.B. 82.
- (5) 43 Law J. Rep. C.P. 385; Law Rep 7 H.L. Cas. 243.
- (6) 46 Law J. Rep. Adm. 68; Law Rep. 1 App. Cas. 662.
- (7) 49 Barb. Amer. Rep. 108.
- (8) 17 Wend. Amer. Rep. 469.

- (9) 19 Barb. Amer. Rep. 678.
- (10) 13 Barb. 169.
- (11) 17 Wend. 571.
- (12) 6 N.Y. 522.
- (13) 4 N.Y. 195.
- (14) 12 Abb. 100.
- (15) 4 Term Rep. 794.
- (16) 6 Tann. 34.
- (17) 2 Term Rep. 385.
- (18) 6 B. & C. 181.
- (19) 1 East, 555.
- (20) 16 East, 215.
- (21) 2 Bing. 156.
- (22) 1 Railway Cases, 558.
- (23) 4 B. & C. 598.
- (24) 6 Ad. & E. 255.
- (25) Sir Barnes Peacock; Sir Montague Smith and Sir Robert P. Collier.

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struct works for this purpose by an Act of the Legislature of Canada, 29 Vict. c. 57 (which was passed before the British North American Act, 1867, No. 10). These powers are found in section 36 of the Act.

The place where the bridge complained of has been built is about two miles above Quebec, and a short distance only below another bridge crossing the St. Charles, called Scott's Bridge, constructed by the Government more than fifty years ago.

The appellant's land lies on the south bank of the river between these two bridges, and is used for agricultural purposes. He and his brother, as partners, own land about half-a-mile above Scott's Bridge, where they carry on the business of potters, and have a pottery and clay pipe manufactory. The appellant originally based his claim on the ownership of these works, as well as of the land below Scott's Bridge, but his claim in respect of the former was not insisted on at their Lordships' bar, and the right to maintain the action was rested solely on his ownership of the land below Scott's Bridge.

The Court of Queen's Bench appears to have doubted whether the statute above referred to, though it authorised the construction of waterworks, which might be brought across the St. Charles, would, if the action were otherwise maintainable, afford a sufficient defence to it, so far as it claimed damages. Mr. Justice Tessier was of opinion that it would be an answer to the claim for the demolition of the bridge.

The questions on which the decision below turned, and which were those principally argued upon the appeal, are, first, whether and in what degree the river is navigable at the place where the bridge has been built; secondly, whether the appellant has sustained special damage from its construction; and, thirdly, whether, without proof of such damage, the action is maintainable.

The river is tidal for some distance above Scott's Bridge, and is navigable for small boats and flats, and for rafts up to and beyond this bridge, but that it is navigable, in a practical and commercial

sense, for larger craft, such as barges (*bateaux*), above the place where the bridge has been built, is controverted, and a great conflict is found in the evidence given at the hearing on this point.

The general character of the river at this place may be thus described—numerous shoals exist in it, its bed is studded with rocks or boulders, which are a source of danger to any craft which may ground upon it, very high tides happen twice in the year, caused by the melting of the snow in spring, and by the rains in autumn, and it is only at the times of these extraordinary tides that barges can at all ascend the river, and then not without difficulty and danger of grounding. The proof of the actual employment of barges in this part of the river is very much what might be expected from this description. Throughout the period of twenty-seven years to which the evidence extends, a rare and intermittent use only has been shewn. Although numerous witnesses were called on the part of the plaintiff, the instances spoken of were very few, with intervals of many years between them. In most of the cases the barges were said to have been brought up to the Corporation Road, which is just above the new bridge. Of those so brought up, about eight or ten were said to have conveyed clay and stores for Messrs. Bell, which were carted from the Corporation Road to their potteries above Scott's Bridge. For some years before the building of the bridge no barges appear to have gone above the place where it stands, and it was contended for the defendants that the inference from these facts was that the employment of barges on this part of the river was neither useful nor profitable, and had practically been abandoned. It was attempted to account for the want of use of this part of the river by the fact of a strike of the bargemen, but this appears to be an insufficient explanation of it. On the part of the defendants, numerous witnesses of good position and of great local experience, including the harbour master of Quebec, owners of barges, shipbuilders, and others, who lived on the banks of the river, or had business there, deposed that the river at and above the spot in ques-

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tion was not navigable for barges on account of the difficulties and dangers of the passage, and that in point of fact these vessels were not on this account employed to navigate it. Barge owners gave evidence that they would not allow their barges to make the passage, and declared that they could not be safely or profitably employed in that part of the river.

There was evidence to the effect that the bridge offered no obstruction to the passage of small boats, flats and rafts, and the obstruction complained of principally was that barges with masts (which most of the Quebec barges carried) could not pass under it without striking or lowering their masts.

The Judge of the Superior Court based his judgment dismissing the suit upon the following considérants:—

“Que le demandeur n'a pas prouvé que les constructions faites par la défenderesse sur la rivière St. Charles, en vertu des pouvoirs à elle conférés par la loi, aient causé aucune dommage ou préjudice au dit demandeur, ou soient de nature à lui en causer à l'avenir.

“Que les seuls dommages que le dit demandeur ait cherché à prouver sont des dommages futurs, incertains, et inappréciables.

“Que les dites constructions faites par la défenderesse ne troublent en aucune manière le demandeur dans sa jouissance et possession des immeubles décrits en la déclaration en cette cause.”

Upon appeal to the Court of Queen's Bench Chief Justice Dorion, after discussing the evidence and some French authorities on the subject, declared that all the circumstances led him to adopt the opinion of the witnesses who considered that the river was not navigable at the place where the bridge is built; but he was further of opinion, supposing the river to be navigable, that the plaintiff had given no sufficient proof of actual or special injury from the construction of the bridge, which entitled him to maintain his action for its demolition or for damages.

Mr. Justice Tessier thought that the evidence of the most competent of the

witnesses proved that this part of the river was not navigable in the true sense of the word, that it was “flottable” for small boats and rafts only, and that it was as much so since the construction of the bridge as before. He also agreed with the Chief Justice that, if the river was to be deemed navigable, the plaintiff had not proved that he had sustained damage. Mr. J. Ramsay dissented from his colleagues on both points, but stated that the plaintiff's actual damage appeared to him to be very small.

The decision in this case is to be governed by the French law, as it prevails in the Province of Quebec.

In the authorities referred to by the Judges below, and those cited at their Lordships' bar, the subject of navigable rivers is discussed principally with a view to determine the question whether a particular river is or is not to be considered the domain of the Crown. The definitions attempted to be given are often vague, and sometimes contradictory.

In *Dalloz* (Rep. Tit. Voirie par eau) it is stated, No. 52:—

“Il ne suffit pas pour qu'une rivière soit réputée navigable qu'elle soit on quelques points de son cours susceptible de porter bateaux; il faut qu'il puisse s'y établir une navigation régulière, que l'on puisse y naviguer librement, y circuler en bateaux, trains, et radeaux, au moins pendant une partie de l'année.”

At the end of the paragraph, he says,—

“En d'autres termes, la seule possibilité de naviguer sur un cours d'eau n'emporte pas pour le public le droit de naviguer, il faut possibilité et permanence dans une certaine mesure.”

In No. 53, the same writer says,—

“D'un autre côté, il n'est pas nécessaire pour qu'une rivière soit considérée comme navigable, qu'il ait sur cette rivière une navigation effective et continue, il suffit que la navigation y soit possible. Il a été décidé en ce sens qu'une rivière anciennement navigable ne cesse pas d'être comprise parmi les dépendances du domaine par cela seul que la navigation ou le flottage y aurait été interrompu depuis un temps plus ou moins long

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(Cons. d'Et. 22 Fév. 1850, aff. Dartique V. No. 338, V. aussi Cons. d'Et. 5 Aout, 1829. aff. Mirandol, V. Eaux, No. 150)."

It is difficult to reconcile these two paragraphs.

The following is a passage from a *Traité des Cours d'Eaux*, by Daviel, 1 Vol., No. 36, p. 34:—

"Mais un cours d'eau n'est réputé navigable parceque, d'un bord à l'autre, il existe un bac de passage, ou parceque quelques riverains, par pur agrément ou même pour l'exploitation de leurs fonds, se serviraient de bateaux. Il faut que d'amont en aval, il y ait navigation proprement dite, ou flottage en trains, et qu'en un mot, le cours d'eau fasse l'office de chemin et de voie de transport."

Dalloz adopts this view (Rep. Tit. Eaux, No. 39), he says: "Il ne suffit même pas qu'une rivière porte des batelets ou bacs pour le passage des personnes ou voitures, il faut qu'elle puisse être parcourue dans un espace assez considerable pour fair l'office de chemin, et servir de moyen de transport."

These general definitions of Daviel and Dalloz shew that the question to be decided is, as from its nature it must be, one of fact in the particular case, namely, whether and how far the river can be practically employed for purposes of traffic. The French authorities evidently point to the possibility at least of the use of the river for transport in some practical and profitable way, as being the test of navigability.

Their Lordships, assisted in their appreciation of the evidence by the findings of the learned Judges below, are disposed to think the result of it to be, that the river is navigable for boats flats and rafts, and that it is possible, at the exceptionally high tides referred to, to float barges as high as Scott's Bridge, but that the difficulties and risks which from natural causes attend the navigation of craft of this description are so great that the river in its present state does not admit of their use in a practical and profitable manner.

Turning to the question of damage, and supposing the river to be navigable in the degree just indicated, their Lordships are not disposed to dissent from the conclu-

sion of the two Courts below, that the plaintiff has not sustained damage by the construction of the bridge.

It is not disputed that small boats, flats and rafts can be navigated as before, unobstructed by the bridge. The interruption complained of is that masted barges cannot pass it without lowering their masts.

It has been already said that the plaintiff's land is used as a farm, and there is no evidence that its occupiers ever employed barges for the purposes of the farm. No produce has been carried from it, and no manure or other things brought to it by such vessels. It does not even appear that in the few instances in which Messrs. Bell are shewn to have brought up clay for their potteries it was landed upon this farm. The barges were on one or two occasions brought into a little creek, part of which adjoins the farm, but the clay appears to have been discharged at the Corporation Road, which is outside it.

It is evident that the plaintiff did not prove that he had sustained damage from actual interruption of traffic. This was scarcely denied, but it was contended that his farm was depreciated in value by reason of the bridge. Upon this question there was a great conflict of testimony. The witnesses for the plaintiff formed their opinion in great measure on speculations of future changes in the use and employment of the property, and of artificial improvements which might be made in the river. This latter speculation cannot legitimately be imported into the consideration of the question. With regard to the plaintiff's witnesses generally, the Courts below obviously distrusted their evidence, and refused assent to their opinions. These witnesses failed to satisfy them that this farm, which has apparently no landing place, and whose owners had never used the river as a means of transport for conveying anything to or from it, was, having regard to the state of navigability of the river above described, really depreciated in value by the fact that masted barges would have to lower their masts to pass under the bridge.

Their Lordships understand the learned Judge of the Superior Court, who heard

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the witnesses, to base his judgment on the ground that no appreciable damage had been or would be caused to the plaintiff's property by the construction of the bridge, and that judgment the Court of Queen's Bench has affirmed without altering the *considérants* on which it is founded. This tribunal usually accepts the concurrent findings of two Courts upon questions of fact, and their Lordships cannot say that sufficient reasons appear in the present case to warrant a departure from their rule.

The main contention, however, of the appellant's counsel has been that, the river being, however imperfectly, navigable, the appellant has a private right, belonging to him as riparian proprietor, to the free use and navigation of the river, independently of his right as one of the public, and that the construction of the bridge is an infringement of that right, which entitles him to maintain an action without proof of actual, and still less of special and peculiar, damage. A case from Lower Canada, presenting this question, and not unlike in its circumstances to the present, came before this Committee some years ago—*Brown v. Gudy* (26). In that case the plaintiff, the owner of land and a mill abutting upon the navigable river Beaufort, brought an action against the riparian owner on the opposite bank for erecting a wharf, which it was alleged obstructed the flow of the water to the plaintiffs, and also the navigation of the river. The plaintiff claimed damages and the demolition of the wharf. A great deal of conflicting evidence was given at the trial upon the question of the alleged obstruction. The judgment of the superior Court contained the following *considérants* which bear on the question of law now under discussion:—"Considering that the river Beaufort is alleged and proved to be a navigable river, and that any obstruction of the same would be a public nuisance; and considering that no action by an individual lies for a public nuisance, unless the party bringing such action has received special and particular damage therefrom." The judgment goes on to state that the Court

further considered that the plaintiff had failed to prove any special or particular damage, and the suit was dismissed. No doubt the Court also found in that case that the plaintiff had not proved that the wharf obstructed or diverted the natural course of the river, but the *considérants* above set out indicate the view of the Court that if an obstruction had been proved the action would require proof of special damage for its support. The Court of Queen's Bench affirmed this judgment, and upon the appeal to Her Majesty this Committee declined to interfere with the concurrent findings of the two Courts in Canada on the question of fact that the plaintiff had failed to prove that the work would be injurious to him. Lord Kingsdown, however, in giving the judgment, discusses the law of Canada on the subject. He says: "The law of Lower Canada, as we collect it from the authorities, seems to stand thus. An officer suing on behalf of the public has a right, at his own instance or on the application of any person interested, to call for the demolition of any work erected without license on the public domain, and he is no more required to prove that the erection has occasioned actual damage to the public than a private person who complains of a wrongful invasion of his property is obliged to prove that it has occasioned actual damage to him; but, although such an officer may, if he think proper, take proceedings to abate the nuisance, he is not obliged, nor is it in all cases his duty, to interfere. A case of this kind is put by Proudhon (*Traité du Domain Public*, tom. 3. p. 192, No. 820) in the passage cited by Mr. Justice Aylwin. He says: 'It may be that in the case of a dyke erected in the bed of a navigable river, the dyke may be no injury to the actual state of the navigation, as being built in an arm of the river where navigation is not practised, and which, nevertheless, does not on that account cease to be a part of the public domain.'"

"If the public officer refuse to interfere, an individual who suffers injury is not prejudiced, he has still his 'action privée,' by which he may recover damages for injury already sustained, and the abatement of the cause of such injury

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for the future. The public and private action are said to be not only independent of each other, but essentially distinct in their object. The fact that the place where the work is erected is public property is of course very important in both cases, in regard to the right of the defendant to do what he has done, but it does not, according to the law, as we can collect it from the authorities, supersede the necessity of the plaintiff in a private action, proving that he has sustained injury by the work special to himself, and beyond that which is common to the public at large, and this, as we have already stated, the plaintiff in this case has failed to do."

In these passages the distinction between the "action privée," founded on a right of property which lies, if the right be invaded, without proof of damage, and the same action which arises only when the party is able to prove damage "special to himself," is plainly assumed to exist in the law of Canada, and to apply to cases analogous to that now under appeal. In the cited case, no doubt, the alleged obstruction was negatived, but the judgment is material for the view it presents of the law on the point now under discussion.

There appears to be a clear distinction in French law between rights of immediate access from a man's property to a highway, and the power to complain of a mere obstruction in it. In a case recently before this board, *The Mayor of Montreal v. Drummond* (3), the plaintiff was the owner of houses in a public street in the city of Montreal, one end of which had been entirely stopped by the Corporation. It was contended for the plaintiff in that case that the right of passage through the street was a private right belonging to him as owner of these houses, and that the closing one end of the street was an interference with his property, and constituted *une expropriation* in respect of which he was entitled to previous compensation, and that this being unpaid, the act of the Corporation was wrongful. It appears from the authorities cited in that case, that the French law recognises "droits d'accès ou de sortie" as rights belonging to a house

in a street, though the authorities differed as to whether a violation of these rights was to be regarded, for the purpose of indemnity, as *une expropriation*, or as constituting only *dommage*. It is evident that this right of access is different from the right of passage which the owner has in common with the public throughout the street; and the distinction is thus adverted to in the judgment of their Lordships:—"The right of access to a house is, of course, essential to its enjoyment; and if by reason of alterations in the street the owner cannot get into or out of it, or is obstructed in doing so, there seems to be no doubt, that by the law of France he is entitled to recover, in some form, indemnity for the damages he sustains. But the stopping of a street at one of its ends does not produce these consequences." It is also said,—“The counsel for the plaintiff contended, indeed, that a right of passage throughout the entire street belonged to the owner of every house as a servitude, and undoubtedly they were able to refer to some authorities in favour of this view, but the weight of authority appears to be the other way. After referring to some of these authorities, the judgment proceeds:—"It certainly then appears that in France the depreciation caused to a house by stopping one end of a street, supposing it to remain open at the other, is not regarded as an interference with the servitude, nor (standing alone) such direct and immediate damage as will give a title to indemnity; and if this be so, there seems no reason or authority for declaring the law to be otherwise in Canada."

These principles appear to be applicable to the position of riparian proprietors upon a navigable river. There may be "droit d'accès et de sortie" belonging to riparian land, which, if interfered with, would at once give the proprietor a right of action, but this right appears to be confined to what it is expressed to be, *accès*, or the power of getting from the water-way to and upon the land (and the converse) in a free and uninterrupted manner. Their Lordships think that this right has not, in fact, been violated in this case; and that, supposing the bridge

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to cause some obstruction to the navigation, the Courts below are right in holding that the plaintiff is not entitled to maintain the action in respect of it without proof of actual and special damage.

The learned counsel for the appellant, in support of their contention on this point, did not at all refer to French or Canadian authorities, but referred only to English and American decisions. These, though they may illustrate the subject, cannot be treated as governing authorities upon the law of the province.

The principal cases cited were *Beckett v. The Midland Railway Company* (4), *The Metropolitan Board of Works v. McCarthy* (5), *Lyon v. The Fishmongers' Company* (6).

In the case in the Common Pleas the railway company had made an embankment in a public road in front of the plaintiff's house, by which the width of the road was considerably diminished, and the immediate access to his house interfered with. It was found as a fact that the house was thereby permanently injured in value. The Court held that the special damage sustained by the plaintiff beyond that of the rest of the public, gave him a right of action, and consequently a right to compensation. The Court, however, evidently thought that it was necessary for the plaintiff to prove special damage, so that this case, even in English law, is beside the point now under discussion.

In *The Metropolitan Board of Works v. McCarthy* (5), the facts were that the plaintiff was possessed of land, on which he carried on trade, situate very near a draw dock in the Thames. This dock, which was much used by the plaintiff for the purpose of his business, was wholly stopped up and destroyed by an embankment constructed by the board, and the value of the land was thereby undoubtedly diminished. The House of Lords affirmed the judgments of the Court of Common Pleas and Exchequer Chamber given in favour of the plaintiff. The plaintiff was not strictly a riparian proprietor, and the decision again turned on the ground that the plaintiff had sustained actual damage beyond that of the rest of the public. In this case the

proximity of the plaintiff's property to the dock was regarded; and no doubt the proximity of property to the highway must usually be a material element in the consideration of the question whether actual damage has in fact been caused to it by the obstruction.

In *The Caledonian Railway Company v. Ogilvy* (27), the House of Lords decided that the mere proximity of the claimant's house to the highway and to the obstruction did not create a particular damage which would give him a right of action. There the highway, which was the road by which the plaintiff's house was approached, was obstructed by the railway being made to cross it on a level within a few yards of his lodge and entrance gate. This level crossing, though it undoubtedly created an obstruction very close to the entrance gate, which rendered the use of the road by those occupying the house constantly liable to interruption and delay, did not affect the immediate access to it, and it was held that the claimant had not proved that he had sustained particular damage beyond that of the rest of the public, and his claim was dismissed.

The case most relied on by the appellant's counsel was *Lyon v. The Fishmongers' Company* (6) in the House of Lords. There the plaintiff was owner of a wharf on the Thames. One of its sides abutted on a tidal inlet which allowed of barges being brought up to and loaded and unloaded from and upon that side of the wharf. Under a license from the conservators of the Thames, the defendants made an embankment fronting the river which entirely filled up the mouth of the inlet, and consequently prevented all access from it to the plaintiff's wharf. The Act of Parliament which empowered the conservators to grant the license contained a saving of the rights of owners of lands on the banks of the river. The question to be decided was, whether the right of access from the inlet to the wharf was a private right which fell within this saving, and the House, overruling the decision of the Lords Justices, held that it was. The learned counsel sought to press the authority of this

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case beyond the point which arose for adjudication, and treated it as an authority for the proposition that every riparian proprietor, as such, has, beyond his right as one of the public, a right to the use of the river in a free and uninterrupted manner, so that any obstruction placed in it would be an invasion of a private right, for which an action would lie, without proof of special or even of actual damage. It would obviously be very difficult to assign the limits of such a right, if it were established, especially in large rivers. Upon consideration of the opinions of the learned Lords, it does not seem to this committee that their decision can be pressed to this extent. The distinction between the right of access from the river to a riparian frontage and the right of navigation when upon it is more than once adverted to, particularly by the Lord Chancellor, who referred, certainly not with disapproval, to the judgment of Lord Hatherley, when Vice-Chancellor, in the case of *The Attorney-General v. The Conservators of the Thames* (28), where that distinction is pointedly taken and acted upon. Whether an obstruction amounts to an interference with the access to the frontage would be a question of fact to be determined by the circumstances of each particular case. When this access is not interrupted, and the waterway of the river is open to the riparian land, the question will arise for decision whether the right of action of the riparian proprietor for a distant obstruction in the river can be based on higher or other ground than would be that of any one of the public using the river and sustaining special damage; though his being such proprietor would obviously be an important element in the question whether such damage had in fact been sustained.

The House of Lords undoubtedly decided that the right of access to the waterway from riparian land is a private right which the owner of such land enjoys *qua* owner. Such a right is analogous to the "*droits d'accès et de sortie*" recognised by the French law. If, as it was contended, the English law attri-

butes larger rights than these to riparian proprietors on navigable rivers, it would seem to go further in this direction than the law of Canada, according to which the case now under appeal has to be determined.

Their Lordships, considering that the bridge in question does not in fact interfere with the access to the plaintiff's land, and therefore, that by the law of Canada it was necessary for the plaintiff to prove actual and special damage arising from it, and not disagreeing with the concurrent judgments of the Courts below that no such damage has been established, are of opinion that those judgments ought to be affirmed, and they will humbly advise Her Majesty accordingly.

The appellant must pay the costs of this appeal.

Solicitors—Hollams, Son & Coward, for appellant;  
Bischoff, Bompas & Bischoff, for respondents.

1879. { ANGUS ROBERTSON AND OTHERS  
Nov. 13. { (*appellants*) v. GEORGE DAY  
                  { (*respondent*).

*New South Wales—Land Acts—Construction—Square Mile—39 Vict. No. 13, s. 31.*

*The Land Act Amendment Act, 1875, provides that the holder of Crown lands under lease for pastoral purposes may, in virtue of intended improvements, apply for, and on certain terms obtain, the right to pre-emption of such land, "provided that no such application shall be made for more than one square mile within each block of five square miles"—*

*Held, that by "square mile" area is intended, and not form.*

This was an appeal from a judgment of the Supreme Court of New South Wales.

On the 18th of February, 1878, the following case was stated for the opinion of the Supreme Court.

An action was brought to recover

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damages for trespasses committed by the defendant upon certain lands situate on the Yarrabee Run, in the district of Murrumbidgee, in the colony of New South Wales, of which run the plaintiffs were the lessees from the Crown.

The defendant pleaded that he was entitled to such lands by virtue of certain conditional purchases from the Crown, under the 13th section of the Crown Lands Alienation Act of 1861.

The plaintiffs being such lessees, on the 17th day of October, 1876, delivered to the land agent at Urana an application to purchase 640 acres of land on the Yarrabee Run, under the 31st clause of the Lands Act Amendment Act of 1875, at the same time tendering 640*l.*, which was refused by the land agent as not being within a block of five miles square.

The run contained several areas of five square miles, but no area of five miles square.

It was contended for the plaintiffs that the land selected by the defendant was land lawfully contracted to be granted in fee simple to the plaintiffs, and therefore not open to conditional purchase.

The defendant contended that the land applied for by the plaintiffs did not come within the provisions of the 31st clause of the Lands Act Amendment Act of 1875.

The question for the opinion of the Court was, Whether the land so applied for by the plaintiffs could be purchased by them under the provisions of the 31st clause? If the Court should be of opinion that the above question should be answered in the affirmative, the verdict to be entered for the plaintiffs; if not, the verdict to be entered for the defendant.

On the 22nd of March, 1878, the case was argued before the Supreme Court, consisting of the Chief Justice, Mr. Justice Hargrave and Mr. Justice Fawcett, when the Court ordered the verdict to be entered for the defendant, the Chief Justice dissenting.

From this judgment the present appeal was brought.

*Mr. Watkin Williams* and *Mr. J. V. Salomons*, for the appellants.—Upon the admitted facts the land applied for by the appellants could be purchased by them

under the provisions of the 31st section of the Lands Act Amendment Act of 1875 (39 Vict. No. 13). The true construction of the section does not require that the area should be in the form of a block five miles square. It is sufficient if the extent of the area be more than or equal to five miles square. Any other construction would render the provisions of the statute nugatory. They referred to *Maxwell on Statutes*, p. 209; *The Sheffield Waterworks v. Bennett* (1); *Ex parte Greenwood* (2); Crown Lands Acts, 1861 and 1875.

The respondent did not appear.

SIR ROBERT P. COLLIER delivered the judgment of their Lordships (3):—The appeal under consideration arises in this way: The plaintiffs are the lessees of a run of pastoral land in the colony of New South Wales, and they bring an action of trespass against the defendant for unlawfully entering a portion of the land within the limits of their lease. Their case is that they, in pursuance of powers given by the local legislature, had duly acquired the rights of persons to whom the Government had contracted to sell a certain area of 640 acres of land within their run, and that the defendant wrongfully entered it. The defendant contends that although the plaintiff had, as is admitted, given the proper notice and taken all the requisite steps to obtain pre-emption of the land in question, that land had ceased to be subject to the right of pre-emption; and that he, the defendant, had obtained it as a free selector under the provisions of the local Acts. It is admitted that if he had the right to do this, he has taken the requisite steps to complete his title.

On the trial a verdict was taken by consent for the plaintiffs, subject to a special case on which the question raised for the decision of the Court was whether the land applied for by the plaintiffs could be purchased by them. After the argument of the special case, the Supreme Court

(1) 41 Law J. Rep. Exch. 233; Law Rep. 7 Exch. 409.

(2) 27 Law J. Rep. Q.B. 28.

(3) Sir James W. Colvile; Sir Barnes Peacock; Sir Montague E. Smith; Sir Robert P. Collier; and Sir Henry S. Keating.

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directed the verdict entered for the plaintiffs to be set aside, and a verdict to be entered for the defendant. The Court was divided, the Chief Justice being in favour of the plaintiffs, and the two Puisne Judges on the part of the defendant. From this decision the present appeal is brought.

The question arises entirely upon the construction of one section of one of the Colonial Acts.

Before considering this, it may be well to state shortly the course of the precedent legislation in the colony in this matter.

In the year 1861 the Crown Lands Alienation Act was passed, which established a code of laws in supersession of those which had been in force under Orders in Council. It may be enough to say that the scope of the legislation was to enable the Crown to grant leases of waste lands, afterwards called Crown lands, and that the greater part of the lands of the colony were so leased that it was nevertheless allowable to any person whatever to select upon these leased lands any portion not exceeding 320 acres for conditional purchase, and to purchase it if he complied with the conditions. On the other hand, with a view to the protection of the Crown lessees, powers were given to them of pre-emption in respect of a limited part of the lands under lease. The 7th section of the Act empowers the lessee "to exercise a pre-emptive right of purchase over one portion and no more of an area not exceeding 640 acres out of each block of twenty-five square miles, and at a value to be determined by appraisalment." The relation of 640 acres to twenty-five square miles appears there to be recognised by the Legislature. A further power is given to the Crown lessee to purchase by way of pre-emption any lands on which he has effected improvements, each purchase being limited to 320 acres; there being apparently no limit to the number of such purchases. Another Act, called the Crown Lands Occupation Act, passed at the same time, contained various provisions with respect to the granting of Crown leases; and it may not be immaterial to observe that the ordinary extent of lease is there stated to be an area of twenty-five square miles,

although there is a power under certain circumstances for the Government to extend that area to an area not exceeding 100 square miles; and that although it is provided that these areas should be, as far as convenient, of a rectangular shape, nevertheless this provision is subject to many exceptions arising from the configuration of the ground and other considerations.

In the year 1875 an Act was passed, amending the former Acts, and undoubtedly the object of this Act appears, among other things, to have been to give additional encouragement and protection to the Crown lessees. The quantity of land which they are enabled to purchase in respect of improvements thereon is increased, and then comes the 31st section, upon which the whole question turns. In order to understand this section, it must be borne in mind that as the law then stood, it was in the power of a free selector, as he was called, to select lands upon which improvements had been partially made, though not completed, greatly to the detriment of the Crown lessee. The object of this section appears to have been to give protection against any such free selection to the Crown lessee for at least twelve months, by enabling him to purchase land upon which he intended to make, but had not actually made, improvements, upon his making a certain deposit and complying with certain conditions. The words of the section are these:—"If any person holding any Crown lands under a lease or promise of lease for pastoral purposes, shall deliver to the land agent of the district an application in writing for liberty, by reason and in virtue of improvements intended to be made thereon, to purchase any area of such land, not exceeding 640 acres nor less than forty acres, describing as may be required by any regulations hereunder the boundaries of the same which shall be subject to the several provisions of the 'Crown Lands Alienation Act of 1861,' and of this Act, and setting forth the intended improvements, and shall also at the same time pay to the said land agent a sum of money equal to one pound per acre on

*Robertson v. Day.*

the area so applied for, such land shall, for the period of one year from the date of such application, be held to be land lawfully contracted to be granted in fee simple, and as such not open for conditional sale by selection, or by auction; and upon completion, to the satisfaction of the minister, of improvements to the value of one pound per acre on the land so applied for, a grant in fee simple of such land shall issue to the person so applying, or his legal alienee or representative, at the appraised value. Provided that if the said improvements shall not be made, 25 per cent. of the deposit shall be forfeited and the balance refunded, and the said land shall be and become Crown land within the meaning of the 'Crown Lands Alienation Act, 1861.' " Here follows the proviso upon the construction of which the whole case depends:—" Provided also, that no such application to purchase as aforesaid shall be made for more than one square mile within each block of five miles square out of each lease, or a proportionate quantity out of any holding of less area."

It is contended, on behalf of the defendant, that the plaintiff had a right to pre-emption of 640 acres, or one square mile, only if it formed part of a block which was a geometrical square, containing an area of twenty-five square miles. On the part of the plaintiff, it is contended that he was able to purchase the square mile, if it formed part of a block which, though not a precise square, contained an area of twenty-five square miles. It is admitted that there was not in the plaintiff's run any block of land in which a geometrical figure could be drawn five miles square, the whole consisting of Crown lands, no portion of which had been purchased; it is admitted, on the other hand, that a figure comprising more than twenty-five square miles, consisting wholly of Crown lands, might be drawn, if the figure need not be a geometrical square.

In considering this question, it is, in the first place, desirable to look at the previous legislation, the surrounding circumstances, and what may be called the reason of the thing. It has been shewn that twenty-five square miles was

the ordinary size of a Crown lease, although that size might be extended. It has not been contended, and probably could not be, that the area comprised in any of these leases forms a precisely square geometrical figure, although, no doubt, it was considered desirable that it should be rectangular, as far as circumstances permitted. If, therefore, the construction of the defendant be adopted, it follows that in runs of the ordinary size, no power existed on the part of the Crown lessee to avail himself of this section, and the section would be in a great measure rendered nugatory. But further, it has been pointed out that, even with respect to runs of a larger size, it would be easy for free selectors, by making selections here and there in the run, to prevent any square figure being drawn in it, consisting wholly of twenty-five square miles of Crown lands. Their Lordships, therefore, cannot shut their eyes to the consideration that the construction on the part of the defendant would render practically inoperative a clause doubtless intended for the benefit and protection of Crown lessees. It is further to be observed that, in the previous legislation of 1861, which may be treated as *in pari materia*, the Legislature has given a power to the Crown lessee to purchase an area—the same area as here described as 640 acres—out of a block defined as twenty-five square miles, the extent of the area of the block, and not the precise configuration of it, being there considered the important matter.

From these considerations it appears more probable that the Legislature intended that which the plaintiffs maintain to be the true construction of the statute; at the same time, this construction ought not to be adopted if the words of the Act are clear and unambiguous, and exclude such a construction. Upon a careful consideration of the words, their Lordships are of opinion that such a construction is not excluded. It is a legitimate rule of construction to construe words in an Act of Parliament with reference to words found in immediate connection with them. It appears to their Lordships that the concluding words of the proviso—"or a propor-

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tionate quantity out of any holding of a less area"—point to the conclusion that the Legislature had in their contemplation rather the question of area than the question of geometrical symmetry, and that when they used the expression, "within each block of five miles square," they really intended to convey the same meaning which they had expressed in the clause *in pari materia* in the Act of 1861, though using a different form of expression. It is doing no violence to language to read the words as if slightly elliptical, and as if they were "within each block of an area of five miles square," or "within each block equivalent to an area of five miles square." To adopt this interpretation—which amounts to no more than supposing that the Legislature used the language in question in its popular rather than in its strictly mathematical sense, and as expressive of area rather than of geometrical symmetry—is to reconcile the two portions of the proviso otherwise in conflict, to give effect to the whole clause, to make it consistent with previous legislation, and with what may reasonably be supposed to have been the intention of the Legislature.

For these reasons their Lordships have come to the conclusion that the Chief Justice was right, and they will humbly advise Her Majesty that the judgment of the Court below be reversed, and that the verdict for the plaintiffs in this action stand. The appellants should have the costs of this appeal.

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Solicitors—Parker & Co., agents for S. C. Brown, Sydney, for appellants.

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1879.  
Nov. 19.

{ WALTER HENRY PEARSON, GEORGE MORISON AND OTHERS (appellants) v. RICHARD SPENCE (respondent).

*New Zealand—Waste Lands—Commissioners—Powers of—Grant.*

*The Southland Waste Lands Act (29 Vict. No. 59, s. 26), provides that rural land shall be open for sale, at a fixed price "provided that it shall be lawful for the governor to raise the price."*

*The respondent made application to the Commissioners of Waste Lands for certain land, and such application was received and filed, and the consideration thereof adjourned. Pending such adjournment, the price of the land was raised:—Held, that the respondent was entitled to a grant of the land at the price fixed at the time of application; and that an injunction would lie to restrain the Commissioners from selling the land to other persons.*

This was an appeal from a judgment of the Court of Appeal in New Zealand.

The appellants, other than the Morisons, were members of the Southland Waste Lands Board, appointed under the provisions of the "Southland Waste Lands Act, 1865" (29 Vict. No. 59). The other appellants, the Morisons, were persons who subsequently applied for part of the waste lands, the subject of the respondent's claim.

The "Southland Waste Lands Act, 1865," provides that rural land is to be open for sale at the fixed price of 1*l.* per acre, unless the price is raised by the Governor in Council. A Board, called the Waste Lands Board, is constituted, by which all applications for land are to be determined. The names of all persons desiring to make applications to the Board are to be entered in the application book in order. The applications are to be considered by the Board in the order in which they appear in the application book. If any applicant does not appear when called in his turn, his application is to be dismissed. Upon payment of the purchase-money, a license to occupy is to be issued to the purchaser by the Board. By the "Southland Waste Lands Act Amendment Act,

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1867," and by the "Waste Lands Boards Appeal Act, 1867," an appeal on all doubtful questions of law to the Supreme Court is provided.

On the 25th of June, 1873, the respondent made an application to the Waste Lands Board as then constituted of the district of Southland for the purchase of a block of Crown land, containing 1,060 acres in Southland.

At a meeting of the Board on the 27th of June, 1873, the application was read, and filed in the office, but its consideration was adjourned.

On the 9th of July, 1873, the Governor in Council made an order, that the price of all lands subject to the provisions of the "Southland Waste Lands Act, 1865," recited in the said Order in Council, should be raised to 3*l.* per acre.

The price at 1*l.* was tendered by the respondent to the Receiver of Land Revenue for the district, who refused to accept it, on the ground that the respondent was legally bound to pay the higher rate of 3*l.* per acre, which the respondent refused to do.

In May, 1876, an application for part of the land, previously applied for by the respondent, was made by the appellants, the Morisons. The respondent opposed the application, and the then Board thereupon submitted a case for the opinion of the Supreme Court to ascertain whether the respondent had acquired a vested interest in the land at the price of 1*l.* per acre, or whether it could still, in consequence of his not having paid or tendered the advanced rate, be treated as open for sale, and the appellants, the Morisons, therefore, be entitled to be declared the purchasers at the rate payable by law for the time being.

On the 15th of August, 1877, the Court decided against the claim of the respondent, and in favour of that of the appellants, the Morisons.

On the 13th of September, 1877, the respondent filed his declaration in the Supreme Court, stating the above facts, seeking to establish his title as purchaser to the said lands, and praying for specific relief, and that the appellants, the Waste Lands Board, might be restrained by in-

junction from proceeding with the sale to the appellants, the Morisons.

The appellants demurred.

On the 6th of December, 1877, the majority of the Judges who heard the case held, that the demurrer should be overruled with costs.

From this judgment the appeal was brought.

*Mr. Leith and Mr. Collyer*, for the appellants.—The respondent failed to shew by his declaration that he was entitled to any part of the specific relief prayed. The respondent, upon his own shewing, was not entitled to a decree declaring him to be the purchaser of the land in question. The appellants, the Morisons, are entitled to have their application granted. The Waste Lands Board, having followed the opinion of the Supreme Court in favour of the right of the Morisons, no injunction can be issued against them to restrain their acting upon such opinion. They referred to *Bell v. The Receiver of Southland* (1).

*Mr. Dennistoun Wood and Mr. Henderson*, for the respondent.—The respondent, by completing his application for the land, acquired the right to purchase it at the price which was then in force. The fact that it was granted by the Waste Lands Board proves it to have been well founded. The new order as to price applied only to lands then open for sale. The lands claimed by the respondent were not then open for sale. The respondent is entitled to the land at one price or the other, his application having been actually granted by the Waste Lands Board. The Board had no authority to entertain the application of the appellants, the Morisons. The appellants, the Morisons, had no title to proceed with their application.

SIR ROBERT P. COLLIER delivered the judgment of their Lordships (2).

The question in this case arises upon demurrer to a declaration. The plaintiff, Richard Spence, sued the Commissioners

(1) 45 Law J. Rep. C.P. 47; Law Rep. 1 App. Cas. 707.

(2) Sir James Colville; Sir Barnes Pocock; Sir Montague E. Smith.

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of the Waste Lands Board in the district of Southland, in the colony of New Zealand, and also certain persons of the name of Morison.

The substantial allegations of the declaration are as follows:—The plaintiff states that—"In pursuance of, and in accordance with the laws then in force relating to the sale and disposal of the waste lands of the Crown," he, on the 25th of June, 1873, applied to the defendants, the Commissioners, for a certain piece of land, and in accordance with the regulations entered and signed his name in the book known as the application book, and delivered to the clerk a written application in this form:—Application for rural land in the province of Southland, New Zealand. To the Commissioners of the Waste Lands Board for the province of Southland. I hereby apply to purchase in terms of the Waste Lands Act of 1865, the land described in the schedule," and so on. He proceeds to allege that at a meeting of the Board on the 27th of June, 1873, upon the appearance of the plaintiff, his written application was opened and read in the presence of the Commissioners, and was filed in the records and minutes of the office, and a minute or entry was made in the words which he sets out. Then he avers:—"Although the plaintiff's said application was received, opened and filed as aforesaid on the 27th of June, 1873, and although there then existed no good reason, either in law or fact, why the application of the plaintiff should not be allowed and granted, the Commissioners of the said Board adjourned its consideration to a future day." That pending the adjournment, namely, on the 9th of July, 1873, an order was made by the Governor in Council, in pursuance of the powers given him by the Southland Waste Lands Act, 1865, raising the price of the land from 1*l.* an acre, which it had been at the time of the application, to 3*l.* He goes on to aver that, after being pressed to decide the case on many occasions, on the 1st of August, 1873, the Waste Lands Board, sitting publicly at a place mentioned, resolved that the plaintiff's application should be granted, and caused a minute to be entered of its decision to that effect in the

record books kept by the Board. He further avers that on the 1st of August, 1873, and after the decision of the Board, the plaintiff applied to the Waste Lands Board for an order upon, or authority directed to the Receiver of Land Revenue for the district of Southland aforesaid, authorising, directing and empowering him to receive the purchase-money, payable by the plaintiff upon and in respect of the said parcel of land, and the said Waste Lands Board thereupon issued and delivered to the plaintiff two blank forms of receipts to be tendered by the plaintiff to the said Receiver of Land Revenue in the words and figures following:—"No. 913. Office of Receiver of Land Revenue, Invercargill, 1st August, 1873. Received from Richard Spence, per K. M'Ivon, the sum of one thousand and sixty pounds sterling, being payment on application for land 1445, section 176. Taringatura district 1060. No. 194. Office of Receiver of Inland Revenue, Invercargill, 1st August, 1873. Received from R. Spence, per K. M'Ivon, the sum of thirty-seven pounds ten shillings sterling, being deposit for survey of application 1445, Taringatura district, 37*l.* 10*s.* 0*d.*" Then he avers, "The plaintiff tendered to Alexander Jamieson Ellis, Esquire, of Invercargill aforesaid, the then Receiver of Land Revenue for the district of Southland, the sums mentioned in the said forms of receipt; but the said Receiver refused to accept payment thereof, upon the ground that the price of land in the said district of Southland had been, by the Order of Council hereinbefore mentioned raised from 1*l.* to 3*l.* an acre, and that, consequently, the plaintiff was legally compelled to pay the said price of 3*l.* an acre, which the plaintiff refused to do." Then the declaration goes on to state that "Afterwards the Superintendent of the Province of Otago, under the powers conferred by the 2nd section of the Southland Waste Lands Act Amendment Act, 1873, appointed Commissioners to classify the unsold Crown lands in the said district of Southland, and under the classification afterwards made by such Commissioners the lands previously applied for by the plaintiff

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were classed and declared to be agricultural lands; and the report of the said Commissioners, duly approved of by the said Superintendent, was published in the *Otago Provincial Gazette*." Then, "On the 14th of September, 1874, the plaintiff personally presented to Henry M'Culloch, Esquire, of Invercargill aforesaid, and the then Receiver of Land Revenue for the district of Southland aforesaid, the forms of receipt before-mentioned, issued by the said Waste Lands Board, and the plaintiff tendered to the said Henry M'Culloch, as such Receiver, the sums of money mentioned and referred to in such receipts; and the plaintiff says that the said Henry M'Culloch, as such Receiver of Land Revenue as aforesaid (although, perhaps, in ignorance of the previous refusal on the part of the said Alexander Jamieson Ellis), accepted the moneys so tendered, and signed the said receipts, which were thereupon delivered back to the plaintiff. Some short time afterwards, the said Henry M'Culloch, as such Receiver of Land Revenue as aforesaid, tendered to the plaintiff the moneys so aforesaid paid by him, upon the ground that they had been accepted in mistake; but the plaintiff declined to receive back the moneys so tendered, insisting that he was entitled to the lands applied for at the price paid to the said Henry M'Culloch, as such Receiver as aforesaid." Then it is stated that the moneys were paid by Mr. M'Culloch into the Treasury, and had been applied accordingly for public purposes. Then comes this further statement:—"On the 25th of May, 1876, the defendants, the Morisons, with knowledge of the plaintiff's said application, applied to the Waste Lands Board of the district of Southland for a certain parcel of land. Such application, so as aforesaid made by the said George Morison, John Morison, and Henry Bannerman Morison, came on to be heard in due course by the Waste Lands Board, and was opposed by and on behalf of the plaintiff on account of his previously vested right; and the defendants, sued as Commissioners of the said Waste Lands Board, thereupon resolved to state a case for the opinion of

the Supreme Court, in order to ascertain and determine whether the plaintiff had acquired a vested interest in the said parcel of land of 1,060 acres at the price of 1*l.* an acre, and whether the said Board could, in consequence of the said plaintiff not having paid or tendered the sum of 3*l.* an acre for the said land, treat it as open for sale, and whether the said defendants, George Morison, John Morison, and Henry Bannerman Morison, were entitled to be declared the purchasers." A case was accordingly stated by the said Waste Lands Board for the opinion of the said Supreme Court, and judgment was on the 15th of August, 1877, delivered thereon by His Honour Mr. Justice Williams, one of the Judges of the said Court, who determined (or advised the said Board) that "the plaintiff was not entitled to have the land applied for by him at less than 3*l.* sterling an acre. Such price not having been paid or tendered, the land was again open for sale, and the defendants, George Morison, John Morison, and Henry Bannerman Morison, were entitled to have their said application granted." The plaintiff then alleges that "the Morisons will now apply for and insist that their said application should and ought to be granted; and the plaintiff says that the defendants, sued as such Commissioners, will grant the application." Then, after stating that, prior to the making the publication of the Order in Council hereinbefore referred to, he had done and performed every act and condition necessary, and so on, and that he is ready and willing to perform and submit to whatever may be required of him by the Court, and so on; the declaration proceeds thus:—"The plaintiff fears and believes that, unless restrained by the injunction of this honourable Court, the defendants will mutually combine to defeat him of his legal and equitable rights to the said parcel or block of 1,060 acres of land, wherefore the plaintiff prays—first, that it may be decreed and declared by this honourable Court that he, the said plaintiff, having performed every condition imposed by law necessary to entitle him to be declared the purchaser at

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the price of 1*l.* an acre of the said 1,060 acres of land prior to the making and publication of the Order in Council in the declaration mentioned, is entitled to the said land as against the defendants, the Messrs. Morison, and all other persons; second, that after the receipt of the purchase-money of 1*l.* an acre in the declaration mentioned, the sale and disposal of the said 1,060 acres passed beyond the control of the said Waste Lands Board; third, that in any event, if the plaintiff should be held not entitled to be declared the purchaser of the said lands at the price of 1*l.* per acre, the said Waste Lands Board was not justified in receiving the application of the defendants, George Morison, John Morison, and Henry Bannerman Morison, for the purchase of the said 80 and 180 acres, and ought not to grant the same; fourth, that if the price payable in respect of the purchase of the said 1,060 acres of land was more than 1*l.* an acre, the plaintiff should have the option of paying the higher price before any application hostile to the plaintiff was entertained by the said Board; fifth, that the defendants, George Morison, John Morison, and Henry Bannerman Morison, may be restrained by the injunction of this honourable Court from further proceeding with their application to purchase the said parcels of 80 and 180 acres of land respectively, and that the defendants, sued as Commissioners of the said Waste Lands Board, may be also restrained from entertaining or taking any step, or doing any act, deed or matter, or thing intended or calculated to give effect to the said application of the Morisons; and, sixth, for general relief.

To this declaration there was a demurrer, and the points intended to be raised are thus stated: that—1. "No action lies against the Commissioners of the Waste Lands Board for not disposing of land or granting applications made for the purchase of land. 2. The Commissioners having judicial functions to perform, cannot be sued for any decision given by them, unless corruption be alleged against them. 3. The Commissioners cannot be sued for gross negli-

gence. 4. The Commissioners having obeyed, as they were by law bound to obey, the opinion of a Judge of the Supreme Court under the Waste Lands Board Appeal Act, 1867, are not liable to be sued for such obedience, and so on. Then there is this stated. 7. If the plaintiff has paid the purchase-money for his land and received receipts from the Receiver of Land Revenue, the jurisdiction of the Commissioners of the Waste Lands Board is at an end. 8 and 9. It appears from the declaration that the plaintiff is not entitled to be declared the purchaser of the land in the declaration mentioned," and that the defendants, the Morisons, are entitled to purchase it.

On this demurrer being argued before the Court of Appeal, two questions were raised: the first being, what may be called the question on the merits, as to whether the plaintiff was or was not entitled to the land on payment of 1*l.* an acre; and the second being, whether supposing the plaintiff to have had this right, and to have been deprived of it, he had sought the proper remedy. Upon the latter question the Court was unanimous in his favour. Upon the first question the Chief Justice, and one of the learned Judges, were of opinion that the plaintiff was entitled to purchase the land at 1*l.* per acre, the other learned Judge being of opinion that he was not entitled to purchase it at a less price than 3*l.* It is from this decision that the present appeal is preferred.

The Southland Waste Lands Act, 29 Vict. No. 59, sect. 26, is in these terms:—"All lands not included in the foregoing regulations"—namely, certain regulations relating to town lands, public reserves, &c.—"shall be open for sale as rural land at the fixed price of 1*l.* per acre. Provided always, that if at any time the Superintendent and Provisional Council of the said province shall recommend the Governor to raise such price, then it shall be lawful for the Governor in Council, if he shall see fit, to raise such price in accordance with such recommendation." The plaintiff made an application in pursuance of this section to the Commissioners who are constituted under this Act, and whose powers are defined prin-

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cipally in the 6th, 7th, 8th, 9th, 10th and 11th sections, which are to the effect that a Board, to be called the Waste Lands Board, to consist of one Chief Commissioner, and not less than three other Commissioners, shall be appointed and removable; that they shall sit at the principal land office; that all the meetings of the Board shall be attended by at least three Commissioners, and open to the public, and "all applications for land and for pasturage, and for timber licenses, shall, after hearing evidence, when necessary, be determined by the Board at some sitting thereof, and the Board shall have power to hear and determine all disputes between the holders of pasturage and timber licenses respecting the boundaries of runs."

There is a subsequent Act of the 10th of October, 1867, the Southland Waste Lands Act, 1865, Amendment Act, No. 64, wherein, by section 29, it is enacted that, "Notwithstanding anything in the said Act to the contrary, no section or block of land shall be selected or taken so as, in the opinion of the Board, to render less available for sale or other disposal, or injuriously to affect in value any other portion of the waste lands in the province; provided always, that in all cases wherein the Board may deem it advisable to withdraw from sale any block or section of land, or refuse to grant any application for such land, the reason or reasons for such withdrawal or refusal shall be recorded in the minutes of their proceedings."

It is material, in the first place, to determine what the application of the plaintiff was. It appears to their Lordships that it was an application for the purchase of the land in question at the price of 1*l.* an acre. It is true that the application does not state the price, but the applicant applies to purchase in the terms of the Southland Waste Lands Act, which declares that the land shall be open for sale at the fixed price of 1*l.* an acre, with a proviso that the Governor, under certain circumstances, may raise the price. Their Lordships think, therefore, that the application was to purchase the land at the price of 1*l.* an acre, that being the fixed price at the

date of the application, and that to construe it according to the defendant's contention, as an application to purchase at any sum to which the ruling price might afterwards be raised, would be a forced construction. The application was lodged, received, and filed by the Board on the 27th of July; and their Lordships may observe, in passing, that that distinguishes the case from *Bell v. The Receiver of Southland* (1), which has been quoted, where the application had not been received or dealt with, or completely made at the time when the change of price was made. If, on the 27th of July, the Commissioners had granted the application, as in the ordinary course they would have done, beyond all doubt the price would have been 1*l.* an acre. Afterwards the price was raised; but the Commissioners, after adjourning the consideration of the question, upon grounds which it is not necessary to consider, came to a final determination on the 1st of August, that the application should be granted, and they entered a minute of their decision.

What then was granted? It appears to their Lordships that the effect of the decision of the Board was to grant the application in its entirety, and the entirety of the application was to purchase the land at the price of 1*l.* an acre. The contention on the other side must be that it was an acceptance of so much of the application as related to the purchase of the land, but not of so much as related to the price. Their Lordships are unable to accede to this distinction.

It appears to their Lordships that there being no other applicant for the land, and no grounds for refusal such as are referred to in the 29th section of the Southland Waste Lands Amendment Act, the plaintiff had a right to have his application granted, and when it was granted it was granted in the terms of that application, one of which was to purchase at a price of 1*l.* an acre. This view disposes of the main question in the case.

The next question which has been raised before their Lordships, but which does not appear to be very distinctly, or at least not in the same form, stated in the grounds of demurrer, is that, inasmuch as the Commissioners decided upon

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a question within their jurisdiction, namely, that the plaintiff had not paid the proper price for the lands, the only remedy is by appeal, and that this action will not lie. This question depends on the powers of the Commissioners, and upon the operation of certain Acts containing provisions with respect to appeals. The provisions with respect to appeals are contained mainly in the 4th section of the Southland Waste Lands Amendment Act, 1867, which is in these terms:—"The decision of the Board on all matters to be by it heard and determined shall, subject to the right of appeal to the Superior Court as hereinafter provided, be final and conclusive. Provided always, that the Board may, on the application of any person, grant a rehearing of any case decided by it if it shall think that justice requires it," &c. There follows a power to grant a case for the opinion of the Supreme Court, which is stated in the declaration to have been acted upon in this case, and some appeal clauses which would appear to be superseded by Act No. 67 of the same session, which contains an appeal clause to this effect:—"If any person consider himself aggrieved by any decision of the said Board, such person may apply to the Supreme Court, provided such person shall within thirty days after the giving of such decision give notice of such appeal to the Board, and also to such persons, if any, as shall have appeared before the Board as opponents of the case or claim or application of such person, and also give security, to be approved of by the Registrar of the Supreme Court, for the cost of the appeal," and so on, "and after hearing the parties, the Court shall give its decision, and cause the same to be certified in writing by the Registrar or Deputy Registrar of the Court, to the Board, and the Board shall be bound to follow such decision, and shall reverse, alter, modify or confirm their decision in accordance therewith, and the Supreme Court may make such order as to payment of costs to either party as to it shall seem meet." Then it goes on to say, "Such appeal shall be in the form of a case agreed on by such Board and the appellant, and if they cannot agree on the case to be

stated, then such appeal shall not be in the form of a case, but the Supreme Court shall hear such appeal, and may receive evidence either orally or by affidavit, and it shall be lawful for the Supreme Court, if to the Court it shall seem fit, instead of deciding any matter of fact in dispute upon affidavit or personal examination by it of witnesses, to order any such question of fact to be found and determined by a jury."

The question arises, whether the Board, in deciding as they did that the plaintiff had no title to the land because he had not paid 3*l.* per acre purchase-money, did or did not act within their jurisdiction. If they acted within their jurisdiction, it would certainly appear that their decision could only be questioned on appeal. It is true that the Board had a right to entertain—indeed, were bound to entertain—the application of the Morisons, and so far as the Morisons were concerned, to decide whether or not the lands were waste lands which they were at liberty to grant to the Morisons; but it appears to their Lordships that the Board had not jurisdiction on the application of the Morisons to decide as against the plaintiff that he had not previously acquired a preferable title to the land. They had no jurisdiction to determine the price of the land. Their jurisdiction as against the plaintiff was spent when they granted or refused to grant his application. But it is said that the plaintiff by appearing before the Commissioners acknowledge their jurisdiction. Even if it were assumed that in such a case consent could give jurisdiction, their Lordships do not think that his appearance before the Commissioners is to be so interpreted; they interpret it as a protest on his part against their dealing with the claim of the Morisons, on the ground that he, the plaintiff, having himself acquired a title to the land, it could no longer be granted to another. It is true that the Commissioners would be entitled to enquire incidentally how and in what way he made out his title; but it appears to their Lordships that when he shewed that his application had been granted, and produced the certificate from the proper

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officer, acknowledging the payment of the purchase-money, the jurisdiction of the Commissioners was at an end, and that they were not entitled to determine as against the plaintiff, that nevertheless he had not a valid title. Indeed, this view seems to be put forth to a certain extent by the defendants in a portion of their demurrer, where they state that "if the plaintiff has paid the purchase-money for his land and received receipts from the Receiver of Land Revenues, the jurisdiction of the Commissioners of Waste Lands is at an end." If the Commissioners had no jurisdiction to deal with the question of the plaintiff's title, the submission by them of a case on the subject to the Supreme Court cannot of course affect the case. For these reasons their Lordships are of opinion that the plaintiff is not put to his appeal; the jurisdiction of the Superior Court is not ousted; and the plaintiff has a right to obtain a declaration of his title to the land. He has further a right to apply to the Court to restrain the Morisons from interfering with his rights or using legal process for that purpose. But it has been further argued that, even assuming the right to a declaration of title, and the right to restrain the Morisons, still no injunction can issue against the Commissioners to restrain them from hearing and determining any question which they have power to determine judicially. Their Lordships observe that the question raised at present is upon general demurrer, and it is enough for the plaintiff to shew that under the circumstances which he states, he may be entitled to some relief; and inasmuch as the Commissioners are not merely a judicial body, but are also an administrative body, and performing many functions which are certainly not judicial, and many which are merely ministerial, the declaration may be supported on the ground that at all events the plaintiff shews a case under which he may be entitled to relief against some of the acts of a ministerial character which they are about to do for the purpose of perfecting the title of the Morisons as against him. It may be if the case comes on for hearing, that the injunction may be so far modified as to be confined to such acts; but

considering the case as it arises upon demurrer, their Lordships are unable to say that the demurrer on this ground is sustainable.

For these reasons their Lordships have come to the conclusion that this demurrer cannot be maintained, that the decision of the Court of Appeal is right, and they will humbly advise Her Majesty that the decision of that Court be affirmed, and that this appeal be dismissed with costs.

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Solicitors—J. Mackrell & Co., for appellants;  
Rose & Fry, for respondent.

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1879. { SIR ANTHONY MUSGRAVE (*appellant*) v. JOSÉ IGNACIO PULIDO (*respondent*).  
Dec. 13.

*Jamaica—Governor—Acts of—Courts of the Colony—Jurisdiction of.*

*The Governor of a Colony does not possess sovereign power. His authority is derived from his commission, and is limited to the powers thereby expressly or impliedly entrusted to him, and he may be sued in the Courts of the Colony of which he is governor.*

This was an appeal from a judgment of the Supreme Court of Judicature of the Island of Jamaica.

The appellant was the Governor of the island.

The respondent commenced an action in the Supreme Court of Judicature of the island against the appellant to recover damages from the appellant for the alleged unlawful detention by the appellant, in the port of Kingston, Jamaica, of the British schooner *Florence*, whereof the plaintiff was charterer.

The appellant pleaded to the declaration as follows:—

"The defendant, Sir Anthony Musgrave, by Samuel Constantine Burke, his attorney, comes and says that he ought not to be compelled to answer in this action, because he saith that at the time of the grievance alleged in

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the said declaration, and at the time of the commencement of this action, he was and still is Captain-General and Governor-in-Chief of the Island of Jamaica and its dependencies, and was and still is as such entitled to the privileges and exemptions appertaining to such office and to the holder thereof, and that the acts complained of in the said declaration were done by him as Governor of the said Island of Jamaica, and in the exercise of his reasonable discretion as such, and as acts of State, and this the defendant is ready to verify, wherefore he prays judgment, if he ought to be compelled to answer in this action."

The respondent demurred to this plea, alleging the following grounds of demurrer:—

"That the plea does not disclose any privilege exempting the defendant, Sir Anthony Musgrave, from answering the action."

On the 6th of July the judgment of the Court was delivered, allowing the demurrer; and it was ordered that judgment should be entered for the respondent, and that the appellant should answer further to the declaration.

From this judgment the appeal was brought.

*The Attorney-General (Sir J. Holker) and Mr. A. L. Smith*, for the appellant.—The plea is good in substance. The appellant, as Governor of the island, is not liable to be sued in the Courts of the island in an action of trespass. The appellant, as such Governor, could not be sued for acts done by him as acts of State. The demurrer admits that the acts complained of were done by the appellant as Governor of the island, and were acts of State. They referred to *Mostyn v. Fabrigas* (1), *Tandy v. The Earl of Westmoreland* (2), *Luby v. Lord Wodehouse* (3).

*Mr. Herschell and Mr. Gainsford Bruce*, for the respondent.—The plea shews no sufficient grounds why the writ in the action should be stayed. There can be

no personal privilege appertaining to the office of governor of a colony, which exempts him from being sued in the Courts of the colony of which he is governor. The allegation in the plea that the acts in question were done by the appellant as Governor and in the exercise of his reasonable discretion as such, and as acts of State, discloses no grounds why the action should be stayed, and the defendant exempted from answering the declaration. They referred to *Hill v. Bigg* (4), *The Nabob of the Carnatic v. The East India Company* (5), *Cameron v. Kyte* (6), *The Secretary for India v. Ramashee Boye Sahara* (7), *The Ex-Rajah of Goorg v. The East India Company* (8), *Phillips v. Eyre* (9).

SIR MONTAGUE E. SMITH delivered the judgment of their Lordships (10):—

To an action of trespass brought against the appellant, Sir Anthony Musgrave, in the Supreme Court of Jamaica, for seizing and detaining at Kingston in Jamaica a British schooner called the *Florence*, of which the plaintiff was charterer, and which had, as alleged, put into the port of Kingston in distress and for repairs, the appellant pleaded the following plea:—  
[His Lordship read the plea.]

The plaintiff demurred to this plea, and the present appeal is from the judgment of the Supreme Court allowing the demurrer, and ordering the appellant to answer further to the writ and declaration.

The plea is in form a dilatory plea, and does not profess to contain a defence in bar of the action. It was advisedly pleaded as a plea of privilege, with the object of raising the question of the immunity of the appellant as Governor from being impleaded and compelled to answer in the Courts of the Colony. That this was so is plain, not only from

(4) 3 Moore P.C. 465.

(5) 1 Ves. jun. 388.

(6) 3 Knapp P.C.C. 332.

(7) 13 Moore P.C. 22.

(8) 27 Beav. 300.

(9) 41 Law J. Rep. Q.B. 20; Law Rep. 6 Q.B. 1.

(10) Sir James W. Colville; Sir Barnes Peacock Sir Montague E. Smith; Sir Robert P. Collier Sir Henry Keating.

(1) Smith's Leading Cases, 4th ed. vol. i. p. 28

(2) 17 State Trials, 1246.

(3) 17 Ir. C.L. Rep. 618.

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the form of the plea, but from an arrangement come to between the parties before the argument of the demurrer. In an interlocutory proceeding to set aside a judgment of *non pros.*, as irregularly obtained, an order was made by consent "that all pleas of the defendant, Sir Anthony Musgrave, except the plea of privilege by attorney, be struck out, together with replications and entry of judgment of *non pros.*, with liberty to the plaintiff to demur, it being arranged that the demurrer be set down for hearing at the present term, and if a judgment respondeat ouster, the defendant, Sir Anthony have liberty to plead Not guilty by statutes."

The decision of the Supreme Court was accordingly given upon the plea, as a plea of privilege, and altogether upon this aspect of it, the judgment being one of respondeat ouster.

Upon the hearing of the present appeal, the Attorney-General, on the part of the appellant, whilst not giving up the plea in the shape in which it was pleaded, insisted that if it disclosed a good defence in substance to the action, as he contended it did, its form and the arrangement of the parties might be disregarded, and a general judgment given for the defendant; and, though under protest from the respondent's counsel, the discussion at their Lordships' bar was allowed to take the wider scope which the Attorney-General's contention introduced into the case.

If the plea is to be regarded as a plea of privilege only, and as claiming immunity to the Governor from liability to be sued in the Courts of the Colony, their Lordships think that it cannot, in that aspect of it, be sustained.

The *dictum* attributed to Lord Mansfield in *Mostyn v. Fabrigas* (1), that "the Governor of a Colony is in the nature of a Viceroy, and therefore locally during his government no civil or criminal action will lie against him, the reason is, because upon process he would be subject to imprisonment," was dissented from, and declared to be without legal foundation in the judgment of the Lords of the Judicial Committee delivered by Lord Brougham in the case of *Hill v. Bigg* (4). In that

appeal their Lordships were of opinion that the plea of the Lieutenant-Governor of the Island of Trinidad to an action brought against him in the Civil Court of the island, claiming that whilst Lieutenant-Governor he was not liable to be sued in that Court, could not be sustained. The action was for a private debt contracted by the defendant in England before he became Governor, but the principle affirmed by the judgment is that the governor of a colony, under the commission usually issued by the Crown, cannot claim, as a personal privilege, exemption from being sued in the Courts of the Colony. The claim to such exemption is thus met:—"If it be said that the governor of a colony is *quasi* Sovereign, the answer is, that he does not even represent the Sovereign generally, having only the functions delegated to him by the terms of his commission, and being only the officer to execute the specific powers with which that commission clothes him."

The defendant has sought to strengthen his claim of privilege by averring in his plea that the acts complained of were done by him "as Governor," and "acts of State." Their Lordships propose hereafter to consider the particular averments of this plea. It is enough here to say that it appears to them that if the Governor cannot claim exemption from being sued in the Courts of the Colony in which he holds that office, as a personal privilege, simply from his being Governor, and is obliged to go further, his plea must then shew by proper and sufficient averments that the acts complained of were acts of State policy within the limits of his commission, and were done by him as the servant of the Crown, so as to be, as they are sometimes shortly termed, acts of State. A plea, however, disclosing these facts would raise more than a question of personal exemption from being sued, and would afford an answer to the action, not only in the Courts of the Colony, but in all Courts; and therefore it would seem to be a consequence of the decision in *Hill v. Bigg* (4) that the question of personal privilege cannot practically arise, being merged in the larger one, whether the facts pleaded shew that

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the acts complained of were really such acts of State as are not cognizable by any Municipal Court.

In the case of *The Nabob of the Carnatic v. The East India Company* (5), Lord Thurlow said that a plea pleaded in form to the jurisdiction of the Court, but which denied the jurisdiction of all Courts over the matter, was absurd; and that such a plea, if it meant anything, was a plea in bar.

In their Lordships' view, therefore, this plea, if it can be supported, must be sustained on the ground mainly relied upon by the Attorney-General, namely, that it discloses in substance a defence to the action.

Before adverting to the sufficiency of the averments in this plea, it will be convenient to refer to some decisions in which the position of governors of colonies has been considered. In the leading case of *Mostyn v. Fabrigas* (1), the action was brought against Mr. Mostyn, the Governor of Minorca, for imprisoning the plaintiff, and removing him by force from that island. The governor's special plea of justification alleged, that he was invested with all the powers, civil and military, belonging to the government of the island, that the plaintiff was guilty of a riot, and was endeavouring to raise a mutiny among the inhabitants, in breach of the peace, and that, in order to preserve the peace and government of the island, he was forced to banish the plaintiff from it. It then averred that the acts complained of were necessary for this object, and were done without undue violence. Upon the trial the Governor failed to prove this plea, and the plaintiff had a verdict. When the case came before the Court of Queen's Bench, upon a bill of exceptions to the ruling of the Judge, Lord Mansfield said his great difficulty had been, after two arguments, to be able clearly to comprehend what the question was that was meant seriously to be argued. It seems, however, that the liability of the Governor to be sued was raised, and very fully discussed, one ground of objection being, that he could not be sued in England for an act done in a country beyond the seas, and upon this question Lord Mansfield declared that the action would,

to use his own phrase, "most emphatically" lie against the Governor. His judgment proceeds to shew, in a passage bearing materially on the point now under discussion, in what way a defence to such an action might be made. He says, "If he has acted right according to the authority with which he is invested, he may lay it before the Court by way of plea, and the Court will exercise their judgment whether it is a sufficient justification or not. In this case, if the justification had been proved, the Court might have considered it a sufficient answer; and if the nature of the case would have allowed of it, it might have adjudged that the raising of a mutiny was a good ground for such a proceeding."

In the case of *Oameron v. Kyle* (6), which came before this Board on an appeal from the Colony of Barbice, the question was, whether the Governor had authority to reduce a commission of five per cent. upon all sales in the Colony, granted to an officer called the Vendue Master by the Dutch West India Company before the capitulation of the Colony to the British Crown. It was urged that the Governor was the King's representative, exercising the general authority of the Crown, and, as such, had power to make the disputed reduction. It was, however, decided that the Governor did not hold the position or possess the authority sought to be attributed to him, and that the act in question was beyond his powers. In the judgment of this Committee, delivered by Baron Parke, it is said:—

"There being, therefore, no express authority from the Crown, the right to make such an order must, if it exist at all, be implied from the nature of the office of Governor. If a Governor had, by virtue of that appointment, the whole sovereignty of the Colony delegated to him as a Viceroy, and represented the King in the government of that colony, there would be good reason to contend that an act of sovereignty done by him would be valid and obligatory upon the subject, living within his government, provided the act would be valid if done by the Sovereign himself, though such

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act might not be in conformity with the instructions which the Governor had received for the regulation of his own conduct. The breach of those instructions might well be contended on this supposition to be matter resting between the Sovereign and his deputy, rendering the latter liable to censure or punishment, but not affecting the validity of the act done. But if the Governor be an officer merely with a limited authority from the Crown, his assumption of an act of sovereign power, out of the limits of the authority so given to him, would be purely void, and the Courts of the Colony over which he presided could not give it any legal effect. We think the office of Governor is of the latter description, for no authority or *dictum* has been cited before us to shew that a Governor can be considered as having delegation of the whole Royal power in any colony, as between him and the subject, when it is not expressly given by his commission. And we are not aware that any commission to Colonial Governors conveys such an extensive authority."

Again, it is said:—"All that we decide is that the simple act of the Governor alone, unauthorised by his commission, and not proved to be expressly or impliedly authorised by any instructions, is not equivalent to such an act done by the Crown itself."

In the well-known case of the action brought by Mr. Phillips against Mr. Eyre, the former Governor of Jamaica, for acts done by him whilst he was Governor, in suppressing an insurrection in that colony, the question raised was, whether the Colonial Act of Indemnity was an answer to an action brought in England. That such an Act was thought to be necessary, and that it was alone relied on as a defence to the action, raises a strong presumption that it had been thought that the action might, but for this Act, have been maintained. It is to be observed, however, that the facts of the rebellion, and of its suppression, were averred in the plea, by way of introduction to the Act of Indemnity, and Mr. Justice Willes, in delivering the judgment of the Exchequer Chamber, after saying that the Court had discussed the validity of the defence

upon the only question argued by counsel, namely, the effect of the Colonial Act, adds—"but we are not to be understood as thereby intimating that the plea might not be sustained upon more general grounds, as shewing that the acts complained of were incident to the enforcement of martial law." (9). It is to be noticed that the nature of those acts, and the occasion upon which they were committed, were shewn by distinct averments in the plea.

It is apparent from these authorities, that the Governor of a Colony (in ordinary cases) cannot be regarded as a Viceroy; nor can it be assumed that he possesses general sovereign power. His authority is derived from his commission, and limited to the powers thereby expressly or impliedly entrusted to him. Let it be granted that, for acts of power done by a Governor under and within the limits of his commission, he is protected, because in doing them he is the servant of the Crown, and is exercising its sovereign authority; the like protection cannot be extended to acts which are wholly beyond the authority confided to him. Such acts, though the Governor may assume to do them as Governor, cannot be considered as done on behalf of the Crown, nor to be in any proper sense acts of State. When questions of this kind arise it must necessarily be within the province of Municipal Courts to determine the true character of the acts done by a Governor, though it may be that, when it is established that the particular act in question is really an act of State policy done under the authority of the Crown, the defence is complete, and the Courts can take no further cognisance of it. It is unnecessary, on this demurrer, to consider how far a Governor when acting within the limits of his authority, but mistakenly, is protected.

Two cases from Ireland were cited by the appellant's counsel, in which the Irish Courts stayed proceedings in actions brought against the Lord Lieutenant of Ireland. In these cases the Lord Lieutenant appears to have been regarded as a Viceroy. In both the facts were brought before the Court, and in both it appeared that the acts complained of were political

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acts done by the Lord Lieutenant in his official capacity, and were assumed to be within the limits of the authority delegated to him by the Crown. The Courts appear to have thought that under these circumstances no action would lie against the Lord Lieutenant in Ireland, and upon the facts brought to their notice it may well be that no action would have lain against him anywhere—*Tandy v. Earl of Westmoreland* (2), *Luby v. Lord Wodehouse* (3).

Several cases were cited during the argument of actions brought against the East India Company, and the Secretary of State for India, in which questions have arisen whether the acts of the Indian Government were or were not acts of Sovereignty or State, and so beyond the cognizance of the Municipal Courts. The East India Company, though exercising (under limits) delegated Sovereign power, was subject to the jurisdiction of the Municipal Courts in India, and it will be found from the decisions that many acts of the Indian Government, though in some sense they may be designated "acts of State," have been declared to be within the cognizance of those Courts. Thus, in the *Rajah of Tanjore's Case* (11), the question to be decided was thus stated by Lord Kingsdown, in giving the judgment of the Committee:—"What is the real character of the act done in this case? was it a seizure by arbitrary power on behalf of the Crown of Great Britain of the dominion and property of a neighbouring State, an act not affecting to justify itself on grounds of municipal law; or was it in whole or in part a possession taken by the Crown under colour of legal title of the property of the late Rajah, in trust for those who by law might be entitled to it? If it were the latter, the defence set up, of course, has no foundation." This Committee, in deciding the questions thus raised, held that the seizure was of the former character, and, therefore, not cognizable by a Municipal Court. The answer of the East India Company in this case did not rest on the simple assertion that the seizure was an act of

State, but set out the circumstances under which the Rajah's property was taken. After referring to the treaties made with the Rajah, it averred that in entering into these treaties, and in treating the sovereignty and territories of Tanjore as lapsed to the East India Company in trust for the Crown, the Company acted in their public political capacity, and in exercise of the powers (referring at length to them) committed to them in trust for the Crown of Great Britain, and that all the acts set forth in the answer "were acts and matters of State."

In the case of *Forester and others v. The Secretary of State for India*, in which the judgment of this Committee was delivered on the 11th of May, 1872, a defence of the same nature as that in the last-mentioned case was set up; but the decision there was, on this point, against the Secretary of State. In this suit also the answer set out the facts which were relied on to shew that the action of the Government complained of was a political act of State.

As far as their Lordships are aware, it will be found that in all the suits brought against the Government of India, whether in this country or in India, the pleas and answers of the Government have shewn, with more or less particularity, the nature and character of the acts complained of, and the grounds on which, as being political acts of the Sovereign power, they were not cognizable by the Courts. (See *The Nabob of the Carnatic v. The East India Company* (5), *The Ex-Rajah of Ooorg v. The East India Company* (8), *Rajah Salig Ram v. The Secretary of State for India*, in which judgment was given by this Committee on the 22nd of August, 1872.)

None of these cases help the present plea. On the contrary, it appears from them not only that the facts were laid before the Courts, but that the Courts entertained jurisdiction to enquire into the nature of the acts complained of, and it was only when it was established that they bore the character of political acts of State that it was decided they could not take further cognizance of them. It is to be observed that the Sovereign authority conferred upon the East India

(11) 18 Moore, P.C. 22.

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Company appears in Acts of Parliament, and, therefore, without being pleaded, the Courts would have judicial notice of it.

Coming to the present plea, we find that, after stating that the defendant was Captain General and Governor-in-Chief of the Island of Jamaica, the only averments in it are, that the acts complained of were done by him as Governor of the island, and in the exercise of his reasonable discretion as such, and as acts of State. There is no attempt to shew the occasion on which the seizure of the plaintiff's ship was made, nor the grounds on which that seizure, which is not in itself of the nature of an act of State, became and was such an act. The plea does not aver, even generally, that the seizure was an act which the defendant was empowered to do as Governor, nor even that it was an act of State. It would have been contended at the trial, if issue had been taken, that it would satisfy the averments of this plea to prove that the defendant assumed to make the seizure as Governor, and assumed to do it as an act of State, without shewing that the act itself was an act of State properly so called, and was within the limits of his authority. It was said that the plea should be construed as requiring, by implication, proof of these matters; but having regard to its nature and form as a plea of privilege, this cannot properly be held to be its meaning. Their Lordships cannot but think it was designedly pleaded in its present shape. It was a preliminary plea intended to raise the question whether the Governor, if acting *de facto* as such, and doing an act that he assumed and deemed to be an act of State, could be called on to shew in the Courts of the Colony that the seizure complained of was really an act of State, of the nature and class of those which, as Governor acting on behalf the Crown, he had authority to do. The object of the plea plainly was to stop the Court from entering upon such an enquiry; but upon the construction now sought to be given to it, this object would, from the first, have been frustrated, if issue had been taken, for the Court must then have gone into the very enquiry which it was the

manifest purpose of the plea to avert. It appears to their Lordships that the plaintiff could not have safely taken issue on it. He would have been met at the trial by the objection that it was a plea of privilege, pleaded as a preliminary plea to the jurisdiction, and neither was, nor was intended to be, an answer to the action.

It was contended that, under "The Supreme Court Procedure Law, 1872," of the Colony, which provides that defects in form shall be disregarded, and that, on demurrer, the Court shall give judgment according to the very right of the cause, the judgment should now be given for the appellant; but their Lordships think, for the reasons above given, that upon this ambiguous and defective plea a proper and final judgment on the right of the cause cannot be pronounced.

In the result, their Lordships must humbly advise Her Majesty to affirm the judgment of the Court below, and with costs.

Solicitors—The Solicitor to the Treasury, agent for S. C. Burke, Crown Solicitor for Jamaica, for appellant; Cookson, Wainwright & Pennington, agents for Harvey & Bourke, Kingston, for respondent.

1879. { ANGELTINA DIAS (appellant)  
Dec. 19. { v. ALFRED DE LIVERA (respondent).

*Ceylon—Roman Dutch Law—Mutual Will—Construction.*

*A testator and his wife, by a mutual will, appointed their daughter, her husband, and their child, "and also the other children which may hereafter be procreated by their daughter," heirs of their estate. The husband died, and the daughter married again and had issue:—Held, first, that such issue were not entitled under the will; secondly, that the second husband became entitled under the testator's will to one-third of his estate, but that as he died before the testator's wife, his share in the wife's property lapsed into residuum.*

This was an appeal from a judgment of the Supreme Court of the Island of Ceylon.

*Dias v. De Livera.*

The suit was brought by the appellant against the respondent in the District Court of Galle.

The following were the facts of the case:—

Don Adrian de Silva Goonetilleka Amarasiri Wardene Modliar and Cornelia Gertruda Anthmisz were married in community of property and had one child Merciana Dorothea, who married Henry Thomas Dias Abeyesinghe, also in community of property.

On the 17th of December, 1848, Don Adrian de Silva and his wife Cornelia Gertruda, executed a mutual will by which they nominated and appointed their daughter Merciana Dorothea and her husband Henry Thomas Dias Abeyesinghe Mohandiram, and their child Angeltina, the appellant, and also the other children which might be procreated by their daughter to be the sole heirs of all their estate.

Don Adrian died on the 6th day of May, 1849, without revoking the will.

On the 14th day of August, 1858, Henry Thomas Dias Abesinhe made a will constituting his wife Merciana Dorothea, and his daughter Angeltina, heirs of his estate. Henry Thomas Dias died on the 1st day of October, 1858, leaving his wife Merciana Dorothea, and his daughter, the appellant, his sole issue.

Cornelia Gertruda, the testatrix, died on the 3rd of September, 1864.

After the death of Henry Thomas Dias his widow, Merciana Dorothea, married the respondent, and by that marriage had issue one son and three daughters, of whom the son and one daughter died in infancy in the lifetime of Merciana Dorothea.

On the 31st of October, 1873, Merciana Dorothea died intestate, leaving her husband, the respondent, surviving.

The appellant, Angeltina, claimed to be entitled to one half of the common estate of Don Adrian de Silva and his wife, Cornelia Gertruda, and also to one half of the common estate of Henry Thomas Dias and his wife, Merciana Dorothea.

The District Judge of Galle gave judgment for the appellant, decreeing that the appellant was entitled to a

moiety of the estate bequeathed by the will of Don Adrian de Silva and his wife, and to a moiety of the estate bequeathed by the will of Henry Thomas Dias. Against this judgment the present respondent appealed to the Supreme Court of Ceylon, and the Supreme Court, by its judgment, reversed the judgment of the District Court, and sent the case back to the District Judge with directions to carry out the appointment of the property passing under the will of Don Adrian de Silva and his wife, upon the principle that the whole property was divisible into sevenths, Merciana Dorothea's representatives taking one share, Henry Thomas Dias' representatives one share, Angeltina, the appellant, one share, and Merciana Dorothea's other four children, or their representatives, one share each.

From this judgment the present appeal was brought.

*Mr. Bompas* and *Mr. Kenelm Digby*, for the appellant.—Merciana Dorothea and her husband took one share only of the property comprised in the will. The property was intended to be distributed amongst the persons entitled at a period not later than the deaths of the testator and testatrix. No child of Merciana Dorothea, born after the deaths of the testator and testatrix, took any share. The children of Merciana Dorothea, intended to be benefited, were the children of the marriage, living at the date of the will. There are no words indicating any intention to benefit children by a subsequent marriage. They referred to *Williams on Executors*, vol. 2, p. 86; *Storr v. Benbow* (1); *Butler v. Low* (2); *Whitbread v. Lord St. John* (3); *Parker v. Tootal* (4); *Mann v. Thompson* (5); *In re Wylde* (6); *Dennysen v. Mostert* (7).

*Mr. Canley* and *Mr. Bulley*, for the respondent.—Although husband and wife are for certain purposes regarded as one

(1) 2 Myl. & K. 46.

(2) 10 Sim. 317.

(3) 10 Ves. 152.

(4) 11 H. L. Cas. 164.

(5) Kay, 638.

(6) 2 De Gex, M. & G. 724.

(7) [41] Law J. Rep. P.C. 41; Law Rep. 4 P.C. App. 236.

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person under English law, yet under the Roman Dutch law, which prevails in the island of Ceylon, they are not so regarded, Henry Thomas Dias and his wife, Merciana Dorothea, therefore took two shares and not one share only, under the will of Don Adrian de Silva and his wife. The gift to "children which may hereafter be procreated by their daughter," Merciana Dorothea, included all the children Merciana Dorothea might have by any husband, and therefore the four children she had by the respondent are included. They referred to *Jarman on Wills*, 2 ed., vol. 2, p. 147; *Mogg v. Mogg* (8); *Gooch v. Gooch* (9); *Deffis v. Goldsmid* (10); *Warrington v. Warrington* (11); *Paine v. Wagner* (12).

SIR ROBERT P. COLLIER delivered the judgment of their Lordships (13).

The following are the material facts of the case now under appeal:—

Don Adrian de Silva Goonetilleka Amarasiri Wardene Modliar (to be hereafter called Don Adrian), and his wife Cornelia Gertruda Anthmisz (to be hereafter called Cornelia) being domiciled in Ceylon, and having one daughter Merciana Dorothea, married to Henry Thomas Dias Abeyesinghe Mohandiram (to be hereafter called Dias), by whom she had an only daughter, named Angelina, made on the 17th of December, 1848, by a notarial deed, a "mutual will," a form of instrument well known to the Roman Dutch law, which is in force in Ceylon.

The material parts of this will are as follows:—

Firstly. These appearers declared to give and bequeath to the poor a sum of 2l., to be distributed according to the wish and discretion of executors herein-after named.

Secondly. These appearers declared to nominate, institute and appoint their beloved daughter, Merciana Dorothea, and her husband, Henry Thomas Dias

Abeyesinghe Mohandiram, of Galle, and their child now existing, and also the other children, which may hereafter be procreated by their daughter, to be the sole heirs of all the estate, goods, effects, chattels and things whatsoever and wheresoever the same may be which shall be left at the death of the first deceased of the said appearers, whether moveable or immoveable, and of what kind or nature soever, which they the said appearers are now jointly in possession of as their common estate, that is to say, all the property which the first-named appearer was possessed of jointly with his first wife Johannes Dias Lama Ettenay, who died about the year 1838, an inventory whereof is filed in the late District Court of Amblangodda, in the matter No. 42, and all the property, both moveable and immoveable, which the said first-named appearer has since acquired, to be divided according to law amongst their said daughter and son-in-law and their child as aforesaid, as also by the children which may hereafter be procreated by their daughter.

Thirdly. The appearers hereby declared to nominate and appoint the survivor of them, together with their aforesaid son-in-law, Henry Thomas Dias Abeyesinghe Mohandiram, to be the executors of the will of the first deceased of the appearers and administrators of his or her estate and effects, and the said appearers nominate the said Henry Thomas Dias Abeyesinghe Mohandiram to be the executor of this will after the death of both the said appearers and administrator of their estate, hereby giving and granting to them and him jointly or severally, all such power and authority as are required or allowed in law, and especially those of assumption, substitution and surrogation.

Don Adrian died on the 6th of May, 1849.

On the 14th of August, 1858, Dias made a will, constituting his wife and daughter heirs of his estate, and died on the 1st of October, 1858.

Cornelia died on the 3rd of September 1864. Merciana married on the 13th of April, 1865, Alfred de Livera, by whom she had four children, two of whom had

(8) 1 Mer. 654.

(9) 14 Beav. 565.

(10) 1 Mer. 417.

(11) 2 Hare, 54.

(12) 12 Sim. 184.

(13) Sir James W. Colville; Sir Barnes Peacock; Sir Montague E. Smith; and Sir Robert P. Collier.

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did before the commencement of the suit.

This action was brought by Angelina against Livera, her mother's second husband, complaining of his preventing her enjoying the share which she claimed of the properties dealt with by the will of Don Adrian and his wife, and praying to be declared entitled to one moiety of the properties in lists B and D, annexed to her libel, and quieted in the possession of the same. B is a list of all the now forthcoming properties which were disposed of by the mutual will. D is a list of the properties held by Diaz and Merciana during their marriage in community; and the first item in it, to which alone this suit relates, is "one half of all the lands mentioned in the annexed list B." Under the will of Diaz, the plaintiff is entitled only to one fourth of the property held by him and his wife in community, but, in their Lordships' opinion, it must be taken to have been admitted on the part of the defendant that Angelina was entitled to half of such property, whatever it may have been, if not by the operation of the will, by gift from her mother, or by family arrangement. By her libel, then, the plaintiff claimed in effect to be entitled to three-fourths of the properties in B, viz., half by virtue of the mutual will, and one fourth by virtue of the will of Dias and the arrangement with her mother.

The questions in the cause, which arose on the construction of the will of Don Adrian and Cornelia, are, first, whether or not the children of Merciana, by her second marriage, were entitled to share under it; secondly, whether Merciana and Dias took each a share or one share between them.

The District Court of Galle found, firstly, that the children of the second marriage did not take; and, secondly, that Dias and Merciana took one share between them.

The Supreme Court found that the children of the second marriage did take, and that Dias and Merciana took each a share.

It was admitted by the counsel on both sides, and indeed appears to have been assumed by the Courts, that the rules of

construction applied to wills in this country apply to wills in Ceylon, modified as these rules must necessarily be in their adaptation to varying circumstances.

The Supreme Court appear to rest their decision on the first point above stated, mainly on the ground that the children "to be procreated" of Merciana formed of themselves a distinct class. They observe, "The gift is to Merciana and her then husband, and her child already born, and to a class (the future children of Merciana), of which class not a single individual was in existence at the time from which, as we hold, the will speaks. This brings the case within another rule mentioned at p. 85 of Mr. Jarman's book, viz., that when there is an immediate gift to children, if there is no child in existence at the testator's death, all subsequently born children will take."

The counsel for the respondent conceded that the judgment could not be sustained on this ground, and admitted that the "class" to be benefited included Angelina, and, indeed, her father and mother. But he based his argument mainly on the following passage from Mr. Jarman's book on wills, and the authorities cited in support of it. (*Jarman on Wills*, 2nd ed., vol. 2, p. 147.)

"We are now to consider how the construction is affected by the words 'to be born,' or 'to be begotten' annexed to a devise or a bequest to children; with respect to which the established rule is, that if the gift be immediate, so that it would but for the words in question have been confined to children (if any) existing at the testator's death, they will have the effect of extending it to all the children who shall ever come into existence, since, in order to give to the words in question some operation, the gift is necessarily made to comprehend the whole."

In support of this proposition Mr. Jarman cites *Mogg v. Mogg* (8) and *Gooch v. Gooch* (9).

He refers to *Mogg v. Mogg* (8), in these terms, "Where a testator devised real estate to trustees, in trust to pay the rents towards the support and maintenance of the child and children begotten and to be begotten of his daughter Sarah

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Mogg, it was contended that notwithstanding the words 'to be begotten,' the devise could apply only to the children born before the testator's death, as these words might be satisfied by letting in the children born after the date of the will before the death of the testator. But the Court of King's Bench (on a case from Chancery) certified that all the nine children of Sarah Mogg, including those who were born after the death of the testator, took under the devise; and Sir W. Grant, M.R., expressed his concurrence in the certificate."

It is to be observed that (in accordance with the then practice) no reasons are given for the certificate of the Court of King's Bench, which was to the effect that all the children of Sarah Mogg took as tenants in tail with cross remainders, nor were reasons given for the concurrence with it of the Master of the Rolls.

In *Gooch v. Gooch* (9), a testator devised lands to trustees in trust "during the lives and life of the longest liver of all the children his daughter, Mary Gooch, hath or shall have," to apply the rents for the support of Mary Gooch and of all her children "which she shall from time to time have living," directing that when the youngest of her children who should live to attain twenty-one should have attained that age, the rents should be paid among the said children and the issue of such as should die leaving issue, and the survivor and survivors of them, during the life of the longest liver of the said children.

Sir John Romilly, M.R., held, on the authority of *Mogg v. Mogg* (8), that children born after the death of the testator were entitled under the trust for children during the minority of the youngest, yet that the time for admission of afterborn children was not to be extended to the death of Mary Gooch, but to the period when the youngest child for the time being attained the age of twenty-one. His judgment proceeds much on the effect of particular expressions in the will.

Mr. Jarman, however, admits that this rule of construction does not apply to general pecuniary legacies, when the effect of letting in children born after the death of the testator would be to post-

pone the distribution of the general estate (out of which the legacies are payable) until the death of the parent of the legatees.

That children born after the death of the testator do not take under such circumstances has been held in many cases.

In *Storr v. Benbow* (1), afterwards confirmed on appeal, Sir John Leach says, "This is an immediate gift at the death of the testator, and is confined to the children then living. The words 'may be born' provided for the birth of children between the making of the will and the death. The cases of *Sprackling v. Ramer* (14), and *Ringrove v. Bramham* (15) are direct authorities on this point. To give a different meaning to the words 'may be born' would impute to the testator the inconvenient and improbable intention that his residuary personal estate should not be distributed until the deaths of all the children of either of his brothers."

*Butler v. Low* (2), is to the same effect. There the testator gave legacies to each of the children of his nephews and nieces "begotten or to be begotten." The Vice-Chancellor (Sir Launcelot Shadwell) held the gift confined to children born before the testator's death, and observed, "if there is a bequest to the children of A., begotten and to be begotten, it has been generally held that the words 'to be begotten' shew only that the testator contemplated children to be born after the date of his will and before his death." The same principle was applied by Lord Eldon in *Whitbread v. Lord St. John* (3), where the words were "all the children born and to be born."

In *Parker v. Tootal* (4), Lord Westbury thus lays down the rule, "Whenever there are words used in a will indicative of a class, the words must be taken to denote the class, as it is constituted, either at the date of the will or at the death of the testator."

The late Mr. Justice Williams, than whom there is no higher authority, in his book on the law of executors and administrators, thus states the law appli-

(14) 1 Dicks, 344.

(15) 2 Cox, 384.

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cable to bequests to children, "The leading principle is, that where a bequest is immediate to children as a class, children in existence at the death of the testator, and these alone, are entitled (amongst which children in *ventre sa mère* are to be considered), and it will make no difference that the bequest is to children 'begotten or to be begotten.'" In support of this proposition he cites the cases above referred to, as well as others, including *Mann v. Thompson* (5). He adds, however, in a note, "but a different rule prevails as 'to real estate,' citing *Gooch v. Gooch* (9). He, of course, admits that a will disposing of personalty may be so drawn as to indicate a clear intention to include after-born children, in which case effect must be given to the intention, as was the case in *Deftis v. Goldsmid* (10).

It does not appear necessarily to follow that a rule which applies where land is devised to trustees, with a continuing trust to pay the rents and profits to those persons who may from time to time become entitled to an equitable estate, must apply where a will contains a simple direction to executors to distribute the *corpus* of a fund.

It must be borne in mind that many of the distinctions made by our law, founded as it is in some measure on the feudal system, between real and personal property, the estates and interest in them respectively, and their mode of devolution, are unknown to the Roman Dutch law, which recognizes no such estate as that to which the devisees were held entitled in *Mogg v. Mogg* (8). Though the question is not free from difficulty, their Lordships have come to the conclusion that the rule deduced from the authorities laid down by Mr. Justice Williams with respect to bequests of personal property is more applicable to the will now under consideration than the rule which was acted upon in *Mogg v. Mogg* (8).

The testator, dealing with his property, whether moveable or immovable, and treating it as one *corpus*, simply directs it to be divided among the class of persons whom he had instituted his sole heirs. It appears improbable that he

should have intended to deprive his daughter, a member of that class, of the benefit of the gift he had made to her, by postponing the distribution of the fund until after her death, or even to postpone her enjoyment of it till she, then a young woman, had passed the age of child bearing, and he may be reasonably assumed to have intended the distribution to take place when his will would become operative according to the ordinary rule of law. This interpretation gives effect to the words "which may be hereafter procreated," by applying it to children to be born between the date of the will and his own death. Whether, if grandchildren had been born between his death and that of his wife, they might have been entitled to a share of the whole or of half the property disposed of by the mutual will, does not arise, inasmuch as his wife died before the second marriage of his daughter.

On the question whether Merciana and Dias took one share or two their Lordships agree with the Supreme Court.

The rule of English law that a gift to a man and his wife and to a third person, is to be construed as a gift of a moiety to the husband and wife and a moiety to the third person, is founded on the doctrine of English law that husband and wife are, for most purposes, one person. And yet any indication, however slight, of an intention that each shall take separately has been held to defeat the application of this doctrine. *Warrington v. Warrington* (11), *Paine v. Wagner* (12), and other cases illustrate the nice distinctions which have been given effect to on this subject. Lord Justice Knight Bruce (*In re Wyld* (6)) attributes the rule to the position, which he describes as "peculiar," of husband and wife under our law.

Under the Roman Dutch law the personal property of the wife is ordinarily, in the absence of special ante-nuptial agreement, held by the spouses as partners, each on the death of the other being entitled to his or her share, while in this country the whole personal property of the wife, including even such choses in action as he may reduce into possession, become the absolute property of the hus-

*Dias v. De Livera.*

band. It would not be difficult to point out many other important differences in the relations of husband and wife under the two systems of law; indeed, so many are these differences, that it would not be incorrect to state as a general proposition that whereas the English law assumes a husband and wife to be, for most purposes, one person, the Roman Dutch law assumes them to be, for most purposes, two. Their Lordships are of opinion that the reason of the rule which applies in England fails in its application to Ceylon, and they construe the words of the will, which direct a division of property between three persons according to what seems their natural meaning, namely, as directing its division into three parts.

But this view does not altogether dispose of the interest of Dias.

The Supreme Court appear to have assumed that the mutual will of Don Adrian and Cornelia "spoke" from the death of the first dying, and that, even if Cornelia might, after the death of her husband, have revoked it, yet, as she did not, it operated from that date upon the whole of the joint property.

Their Lordships cannot assent to this view. A mutual will is, as was pointed out by this Board in *Dennysen v. Mostert* (7), in effect two wills, the disposition of each sharer being applicable to his or her half of the joint property.

They regard the expression in the will, "all the estates, goods, effects, chattels, and things whatsoever and wheresoever the same may be which shall be left at the death of the first deceased of the appearers," as having no other operation than to describe the property dealt with by the will, excluding, as they do, property after acquired by the survivor.

Their Lordships are, therefore, of opinion that Dias took a third share of the property of Don Adrian on Don Adrian's death; but that, inasmuch as he died before Cornelia, his share of her property lapsed into the residue, which on her death her daughter and her grand-daughter were entitled to divide equally between them.

For these reasons their Lordships will humbly advise Her Majesty that the

judgment appealed against be reversed, and that in lieu thereof it be declared that the children of Merciana by her second husband took nothing under the will of Don Adrian and Cornelia his wife. That upon the death of Don Adrian his half of the property dealt with by the will became divisible in three equal shares among Merciana, Dias and the plaintiff, and that upon the death of Cornelia, her half of the property became divisible in equal shares between Merciana and the plaintiff; and that the plaintiff is entitled to half of the property held in community by Dias and his wife, and the cause be remitted, with these declarations, to the Supreme Court of Ceylon. There will be no costs of this appeal.

Solicitors—Cronin & Rivolta, for appellant;  
Arthur Cayley, for respondent.

1880. { JEAN BAPTISTE THEOPHILE  
Feb. 10. { DORION (*appellant*) v. LES  
ECCLÉSIASTIQUES DU SEMI-  
NAIRE DE ST. SULPICE DE  
MONTREAL (*respondents*).

*Canada—Active Servitude—Repair of Road—Servient Tenement—Sale by Sheriff—Prescription, Effect of—Civil Code, Arts. 499, 2251.*

*By Art. 499 of the Civil Code of Canada "a real servitude is a charge imposed on one real estate for the benefit of another belonging to a different proprietor."*

*Held, that a servitude may be imposed to make or maintain a road, and that such servitude is not purged on a sale of the servient tenement by the Sheriff, or the rights to such servitude barred by non-repair, provided the user has continued.*

This was an appeal from from a judgment of the Court of Queen's Bench for the Province of Quebec.

The respondents were Seigneurs of the Seigneurie de l'Isle de Montreal. By a notarial deed, dated the 16th of Novem-

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ber, 1804, they granted to one Oliver Smith certain lands situate in the parish du Sault au Recollet, adjoining certain other lands retained by and still in the possession of the respondents. The grant to Oliver Smith was expressed to be made upon certain terms and conditions, and amongst others upon the condition that the said Oliver Smith or his representatives should furnish land for the entire breadth of the road fronting the land, the subject of the conveyance, and further should make and maintain such road, and also should make and maintain the fences and ditches on both sides of the road so long as the said Seigneurs should remain in possession of the opposite property.

The important part of the deed was as follows:—

“ Plus à la charge que tant que les dits Sieurs Seigneurs seront voisins, le dit preneur sera chargé seul de toutes les clôtures et fossés nécessaires le long de la ligne de séparation sans pouvoir demander aucun découvert aux dits Sieurs Seigneurs, plus le dit preneur, ses dits hoirs et ayant-causes seront chargés de fournir toute la largeur du chemin sur le front de la dite terre et ensuite de le faire et l'entretenir, et même de faire les fossés et clôtures des deux côtés du dit chemin tant que les dits Sieurs Seigneurs posséderont la partie du dit domaine opposée.”

On the 7th of February, 1862, part of the land granted by the deed of the 16th of November, 1804, was seized and taken in execution by the Sheriff of Montreal, and was sold and purchased by the appellant.

The respondents not having repaired the half of the road fronting that portion of their property which had been retained by them, and which was opposite to the land so purchased by the appellant, the authorities of the parish du Sault au Recollet, commenced an action against the respondents, to recover the expenses of repairing that portion of the road.

On the 20th of March, 1874, the respondents commenced an action *en garantie* against the appellant, which was the subject of the present appeal.

By the declaration the respondents, after setting out the provisions in the

conveyance to Oliver Smith, alleged that the appellant was and had been for many years the possessor and proprietor of the land conveyed by the said deed, and as such possessor and proprietor was liable to maintain the whole of the said road, the respondents being still the possessors and proprietors of the property opposite to the appellant's land. The declaration then went on to allege that the appellant having failed to do the necessary repairs, the corporation of the parish du Sault au Recollet had repaired the road and had brought an action against the respondents to recover the amount of such repairs, and the respondents prayed that the appellant might be ordered to guarantee and indemnify the respondents from any judgment which might be given and pronounced against them.

The appellant pleaded that he had purchased the land sought to be charged at a public sale of the sheriff free from any charge, obligation or servitude, and that such sale had discharged the land from any such charge as was claimed by the respondents. The appellant also pleaded that any such right, charge or servitude, as claimed by the respondents, if it existed, was barred by prescription, the appellant having had peaceable possession of the said land for more than ten years as *bona fide* proprietor thereof.

The first action proceeded to hearing and the Superior Court gave judgment in the principal action, in which the respondents were defendants, and thereby adjudged that the respondents should pay to the corporation of the parish du Sault au Recollet the claim, with interest and costs.

The action, which was the subject of the present appeal, was then proceeded with and judgment therein was given in the Superior Court to the effect that the appellant should guarantee and indemnify the respondents against the judgment pronounced against them in the principal action.

From this judgment the appeal was brought.

*Mr. Barnard and Mr. Kenelm E. Digby*, for the appellant.—The obligation of repairing the road created by the deed

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was merely a personal obligation, binding only on the parties to the deed, and their representatives, or at all events, was not a servitude within the meaning of Article 499 of the Civil Code of Lower Canada. If any charge was created binding the land comprised in the deed, the sale by the sheriff liberated and discharged the land from any such charge. If any such servitude as the respondents allege ever existed, the right which the respondents may have had in respect thereof is now barred. The appellant has had possession for more than ten years before the commencement of the action. They referred to *Toullier*, pp. 241, 223, No. 382; *Pardessus, Servitudes*, p. 25, No. 10, p. 28, No. 11; *Grande Coutume de Ferrière*, p. 1,474, No. 7; *Pothier, Cout d'Orleans*, pp. 87, 90; *Succession*, ch. 4, Art. 5; *Obligation*, No. 679; 1 *Delvincourt*, p. 419, Nos. 4-5; *Heineccius, Traduction de Berthelot*, p. 112; *Duranton*, vol. 5, No. 613; *Prescription*, No. 330; *Demolombe*, vol. 2, 12, Nos. 871, 873, 875, 876, 877; *Code Civil, of Canada*, Arts. 499, 554, 555, 2,236; *Code Napoleon*, Art. 2,257, and to *Murray v. M'Pherson* (1).

Mr. Benjamin and Mr. Rodwell, for the respondents, were not heard.

Sir MONTAGUE E. SMITH delivered the judgments of their Lordships (2).

This appeal arises in two actions which were brought in the Superior Court of the Province of Quebec. The original action was brought by La Corporation de la Paroisse du Sault au Recollet against Les Ecclesiastiques du Séminaire de St. Sulpice de Montréal, to recover the expenses of the repair of part of a road which the seminary was liable by the general law to repair. The seminary, who are the respondents in the present appeal, then brought an action *en garantie* against the appellant, Mr. Dorion, to compel him to indemnify them from the consequences of the action by the parish, on the ground that he held an estate subject to an obligation to repair the portion of the road in respect of which the seminary were sued by the parish.

(1) 5 Lower Can. Rep. 359.

(2) Sir James W. Colville; Sir Barnes Peacock; Sir Montague E. Smith; and Sir Robert P. Collier.

The circumstances which gave occasion to the action *en garantie* are shortly these: On the 16th of November, 1804, a seignorial deed was executed between the seminary of the one part and one Oliver Smith of the other, by which the seminary granted land, part of a larger estate, to Smith upon certain conditions. The condition which creates the obligation in question is the following:—"Plus le dit preneur, ses dits hoirs et ayant-causes seront chargés de fournir toute la largeur du chemin sur le front de la dite terre, et ensuite de le faire et l'entretenir, et même de faire les fossés et clôtures des deux côtés du dit chemin tant que les dits sieurs seigneurs posséderont la partie du dit domaine opposée." The land so granted to Smith, though it does not appear by what means, became the property of one Dugas and his wife, and was sold by the sheriff on the 7th of September, 1862, under a decree against Dugas and his wife, to Dorion, the appellant.

It is contended, on the part of the appellant, that whatever obligation was created by the grant to Smith to repair the piece of road in question was purged by the sheriff's sale; and he relied on certain Articles of the Code of Procedure for Lower Canada, which are to the effect that a sale by the sheriff discharges the estate from all real claims except those specifically mentioned. One of those specifically mentioned is servitudes. Article 709 is this:—"A sheriff's sale does not discharge immovables from servitudes with which they are charged."

The question in this case is, whether the obligation contained in the original deed of grant of this estate to Smith created a servitude. In considering this question the provisions of the Civil Code of Canada which define and enumerate servitudes are to be regarded. Article 499 of that Code defines generally a servitude:—"A real servitude is a charge imposed on one real estate for the benefit of another belonging to a different proprietor." The obligation to repair a road imposed on one estate for the benefit of the owners of another would, *prima facie*, seem to be a charge within the terms of this article. No doubt, by the old French

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law founded on the Roman law, and by the law of Canada before the Code, a servitude was understood to be, that the owner of the servient tenement was only to suffer, and not to do any act. It is unnecessary to cite the authorities on that subject, because the old law is clear, and may be taken to be correctly stated by Toullier (3rd volume) in Nos. 377 and 378, which are cited by Mr. Justice Belanger in his judgment. Toullier's observations are an exposition of the maxim:—"Servitutum non ea natura est ut aliquid faciat quis—sed ut aliquid patiatur aut non faciat." It is admitted by writers on the French Code, which contains a definition and enumeration of servitudes similar to those found in the Canada Code, that the principle of the old law has been invaded, and that under the Code some active servitudes may be imposed upon land. But they qualify the admission by affirming that only such active servitudes as are ancillary to servitudes in their strict meaning are contemplated by the Code.

In reference to the particular obligation in question, the following articles of the Canada Code are material to be considered: Article 553, "He to whom a servitude is due has the right of making all the works necessary for its exercise and its preservation;" Article 554, "These works are made at his cost, and not at that of the proprietor of the servient land, unless the title constituting the servitude establishes the contrary." Therefore the Code contemplates that, in the creation of a servitude, the parties may by contract impose the active maintenance of it upon the servient tenement. Demolombe's Commentary on the Code Napoléon was cited to establish that a limitation had been placed on the generality of the Article of that Code which corresponds with Article 499 of the Canada Code. No doubt Demolombe has put a limited interpretation upon that article, and holds that it must be confined to those active servitudes which are ancillary to passive servitudes. He says in his 12th volume, No. 871, "Régulièrement le propriétaire du fonds servant n'est tenu que d'une obligation toute passive." But he goes on to say at No.

873: "L'article 698, *au contraire*, après avoir déclaré que les ouvrages nécessaires à l'exercice de la servitude sont aux frais du propriétaire du fonds dominant, et non à ceux du propriétaire du fonds assujéti, cet article ajoute cette disposition: A moins que le titre d'établissement 'de la servitude ne dise le contraire,' et décide, comme règle générale, qu'il est permis par l'acte constitutif de la servitude de mettre ces ouvrages et ses frais à sa charge."

In the present case, their Lordships think that the effect of the deed is, that the estate was conveyed to Smith subject to the obligation that part of it was to be used for a road which the grantee was to make and keep in repair. The land to be so used was not excepted out of the grant to Smith, but on the contrary was granted to him as part of an entire estate, subject to the obligation that it should be used for the purpose of a road. The obligation to repair was not an independent servitude separately created, but was part of the entire servitude imposed upon the land on the grant of it. In its inception there can be no doubt that this was so, and that the obligation was for the benefit of the estate which the seminary retained, and which may be called the dominant tenement. By imposing the obligation upon their grantee to furnish the land for the road out of the estate granted to him, the seminary escaped the liability of furnishing any of the land they retained for that purpose, and they provided that the liability should fall upon the grantee of making and repairing the road for its whole breadth. An obligation would otherwise have rested upon that part of the estate they retained to make and repair so much of the road as was opposite to their land, *ad medium filum*.

A real servitude having been defined in Article 499, Article 500 is in these terms: "It arises either from the natural position of the property or from the law, or it is established by the act of man;" the last expression, of course, meaning by the contract of the parties. Then the Code, having dealt with those which arise from the situation of property, proceeds in Article 506 to define servitudes estab-

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lished by law: "Servitudes established by law have for their object public utility or that of individuals." Article 507, "Those established for public utility have for their object the foot-road or tow-path along the banks of navigable or floatable rivers, the construction or repair of roads, or other public works." So that one of the servitudes which may be imposed by law is the construction and the repair of roads. Can a servitude of a like nature be created by contract? Their Lordships think it is unnecessary to determine the question in this naked form, because they are of opinion, for the reasons above given, that the obligation to make and repair the road formed part of an entire servitude, to allow the use of land for the purpose of a front road (a use in which the owner on the opposite side was interested), and to make and repair that road. That was the obligation and servitude which Smith undertook in accepting the grant from the respondents, and to which the land became subject.

Then it is said that the present appellant, Dorion, bought at the sheriff's sale only the land up to the road. Undoubtedly it is so described, but the obligation to repair affected the whole of the estate originally granted to Smith, and could not be got rid of by Smith, or anybody deriving title from or through him, severing the estate, if, indeed, which is not clear, the sale had that operation.

Their Lordships think, therefore, that the majority of the Judges below were right in the conclusion to which they came, that this obligation was a servitude within the meaning of the Civil Code, that it was not purged by the sheriff's sale, and was kept alive by force of Article 709 of the Code of Civil Procedure. The Judges rest their judgment in some degree upon a case of *Murray v. M'Pherson* (1), which had been decided before the preparation of the Civil Code, and they say that some provisions of the Code were founded upon the principle acted upon in that decision. However that may be, their Lordships think, though the case is not without its difficulties, that they ought not to disturb the decision of the Court below upon this point.

The next question is, whether the right to insist on this servitude has been taken away by prescription. The question arose below, and has been argued at the bar, whether the case falls within Article 2,251, which gives a prescription of ten years, or Article 562, which gives a prescription of thirty years. It was admitted that the latter had not run against the right in point of time. Then, supposing that the appellant is right in considering that Article 2,251 is applicable to the case, their Lordships think that the right is not prescribed by it. That article is as follows: "He who acquires a corporeal immovable in good faith under a translatory title prescribes the ownership thereof, and liberates himself from the servitudes, charges, and hypothecs upon it by an effective possession in virtue of such title during ten years." If this servitude were to be regarded as a mere obligation to defray certain charges as an independent servitude, it may be that it would have been prescribed under this article, inasmuch as no repairs had been done, and no claim made in respect of them, for a period of ten years. But the servitude, as their Lordships understand it, and as they have already intimated, was not of this nature; and it appears to them that the obligation to repair cannot, for this purpose, be regarded separately from the obligation to allow the land to be used as a road. Then, if that be so, the land has been constantly used as a road, and, therefore, the appellant has not had effective possession for ten years in virtue of his title against the servitude so understood. The Judges below have unanimously decided against the appellant on this point.

For these reasons, their Lordships will humbly advise Her Majesty to affirm the judgments of the Court below, and with costs.

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Solicitors — Freeman & Bothamley, agents for Barnard, Montreal, for appellant; Robinson & Wilkins, agents for Geoffrion, Rinfret, & Dorion, Montreal, for respondents.

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1879. { PIERRE VINCENT VALIN (ap-  
Dec. 13. { pellant) v. JEAN LANGLOIS  
(respondent).

*Canada — Dominion Parliament — Powers of—Controverted Elections—30 Vict. c. 3. ss. 41, 91, 92, Canadian Act, 37 Vict. c. 10.*

*The British North American Act, 1867, by section 41 enacts that, until the Parliament of Canada shall otherwise provide, the laws relating to controverted elections shall apply to elections in the respective provinces.*

*Section 91 enacts that it shall be lawful for the Parliament of Canada to make laws in all matters not assigned to the provincial legislatures, and section 92 that such legislatures shall exclusively make laws in relation to the administration of justice in each province.*

*The Dominion Act, 7 Vict. c. 10, by section 3 enacts that the Superior Court of each province shall have jurisdiction in election petitions:—*

*Held, that an election petition is not a matter in relation to the administration of justice within the meaning of section 92, and was within the legislative power of the Dominion Parliament.*

This was a petition for leave to appeal from a judgment of the Supreme Court of Canada.

The petition stated that the appellant was elected a member of the House of Commons of Canada for Montmorency, and that the respondent was also a candidate for the same place at the same election. That the respondent filed a petition in the Superior Court of Quebec against the return of the appellant, alleging that the appellant had been guilty of bribery at the said election. That in January, 1879, the petition came on for hearing before the Chief Justice, when the appellant objected to the jurisdiction of the Court, but such objection was dismissed. That the petitioner appealed to the Supreme Court of Canada, which Court affirmed the judgment of the Court of Quebec and transmitted the petition to that Court to be proceeded with according to law.

The British North American Act,

1867, by section 41 enacts that, until the Parliament of Canada otherwise provides, all the laws in force in the several provinces of the union in relation to the qualification or disqualification of the persons to be elected, or to sit or vote as members of the House of Assembly or Legislative Assembly in the several provinces and to the trial of controverted elections, and the proceedings incident thereto, shall apply to the election of members to serve in the House of Commons of the several provinces.

The 91st section enacts that it shall be lawful for the Queen, by and with the advice and consent of the Senate and House of Commons to make laws for the peace, order and good government of Canada in relation to all matters not coming within the classes of subjects by that Act assigned exclusively to the legislatures of the provinces.

The 92nd section enacts that in each province the Legislature may exclusively make laws in relation to "the administration of justice in the province including the constitution, maintenance and organisation of provincial Courts and procedure in civil matters in those Courts."

The 101st section provides that "the Parliament of Canada may, notwithstanding anything in this Act, from time to time provide for the constitution and organization of a general Court of Appeal for Canada and for the establishment of any additional Courts for the better administration of the laws of Canada.

The Dominion Controverted Elections Act, 1874 (37 Vict. c. 10), by section 3, provides that for the purposes of that Act as respects elections in the several provinces, "The Court" shall mean in the province of Quebec the Superior Court for that province, and such Court shall have the same powers, jurisdiction and authority with reference to an election petition, and the proceedings thereon, as if such petition were an ordinary cause within its jurisdiction.

The 38 Vict. c. 11 created a Supreme Court for the dominion of Canada, and the 48th section provided that when such Supreme Court should be constituted, any party to an election petition under

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37 Vict. who might be dissatisfied with the judgment of the Court of the provinces might appeal to such Supreme Court.

*Mr. Benjamin* and *Mr. Bruce*, for the petitioner.—The Parliament of Canada owes all its authority to the Act of 1867. That statute expressly excludes the jurisdiction of the Dominion Parliament in matters relating to the administration of justice. The trial of an election petition must be a matter relating to the administration of justice. The power given by the Act to the Supreme Court of the provinces to try election petitions was *ultra vires*, and can have no validity. The Superior Court had no jurisdiction to try the petition.

The respondent did not appear.

LORD SELBORNE delivered the judgment of their Lordships (1).

Their Lordships have carefully considered the able argument which they have heard from *Mr. Benjamin*, and they feel glad that so full an argument has been offered to them, because there can be no doubt that the matter is one of great importance. The petition is to obtain leave to appeal from two concurrent judgments of the Court of First Instance and of the Court of Appeal affirming the competency and validity of an Act of the Dominion Legislature of Canada. Nothing can be of more importance, certainly, than a question of that nature, and the subject-matter also, being the mode of determining election petitions in cases of controverted elections to seats in the Parliament of Canada, is beyond all doubt of the greatest general importance. It therefore would have been very unsatisfactory to their Lordships to be obliged to dispose of such an application without at least having had the grounds of it very fully presented to them. That has been done, and I think I may venture to say for their Lordships generally that they very much doubt whether, if there had been an appeal and counsel present on both sides, the grounds

on which an appeal would have been supported, or might have been supported, could have been better presented to their Lordships than they have been upon the present occasion by *Mr. Benjamin*.

In that state of the case their Lordships must remember on what principles an application of this sort should be granted or refused. It has been rendered necessary, by the legislation which has taken place in the colony, to make a special application to the Crown in such a case for leave to appeal; and their Lordships have decided on a former occasion that a special application of that kind should not be lightly or very easily granted; that it is necessary to shew both that the matter is one of importance, and also that there is really a substantial question to be determined. It has been already said that their Lordships have no doubt about the importance of this question, but the consideration of its importance and the nature of the question tell both ways. On the one hand those considerations would undoubtedly make it right to permit an appeal, if it were shewn to their Lordships, *prima facie* at all events, that there was a serious and a substantial question requiring to be determined. On the other hand, the same considerations make it unfit and inexpedient to throw doubt upon a great question of constitutional law in Canada, and upon a decision of the Court of Appeal there, unless their Lordships are satisfied that there is, *prima facie*, a serious and a substantial question requiring to be determined. Their Lordships are not satisfied in this case that there is any such question, inasmuch as they entertain no doubt that the decisions of the Lower Courts were correct. It is not to be presumed that the Legislature of the Dominion has exceeded its powers, unless upon grounds really of a serious character. In the present case their Lordships find that the subject-matter of this controversy, that is, the determination of the way in which questions of this nature are to be decided, as to the validity of the returns of members to the Canadian Parliament, is, beyond all doubt, placed within the authority and the legislative power of the Dominion Parliament by the 41st section of the Act of 1863, to which

(1) Lord Selborne; Sir James W. Colville; Sir Barnes Peacock; Sir Montague E. Smith; and Sir Robert P. Collier.

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reference has been made; upon that point no controversy is raised. The controversy is solely whether the power which that Parliament possesses of making provision for the mode of determining such questions has been competently or incompetently exercised. The only ground on which it is alleged to have been incompetently exercised is that by the 91st and 92nd clauses of the Act of 1867, which distribute legislative powers between the provincial and the Dominion legislatures, the Dominion Parliament is excluded from the power of legislating on any matters coming within those classes of subjects which are assigned exclusively to the Legislatures of the provinces. One of those classes of subjects is defined in these words by the 14th sub-section of the 92nd clause: "The administration of justice in the province, including the constitution, maintenance and organisation of provincial Courts both of civil and of criminal jurisdiction, and including procedure in civil matters in those Courts." The argument, and the sole argument, which has been offered to their Lordships to induce them to come to the conclusion that there is here a serious question to be determined, is that the Act of 1874, the validity of which is challenged, contravenes that particular provision of the 92nd section, which exclusively assigns to the provincial legislatures the power of legislating for the administration of justice in the provinces, including the constitution, maintenance and organisation of provincial Courts of civil and criminal jurisdiction, and including procedure in civil (not in criminal) matters in those Courts. Now if their Lordships had for the first time, and without any assistance from anything which has taken place in the colony, to apply their minds to that matter, and even if the 41st section were not in the Act, it would not be quite plain to them that the transfer of the jurisdiction to determine upon the right to seats in the Canadian Legislature—a thing which had been always done, not by Courts of justice, but otherwise—would come within the natural import of those general words: "The administration of justice in the province, and the consti-

tution, maintenance and organisation of provincial Courts, and procedure in civil matters in those Courts." But one thing at least is clear, that those words do not point expressly or by any necessary implication to the particular subject of election petitions; and when we find in the same Act another clause which deals expressly with those petitions there is not the smallest difficulty in taking the two clauses together and in placing upon them both a consistent construction. That other clause, the 41st, expressly says that the old mode of determining this class of questions was to continue until the Parliament of Canada should otherwise provide. It was therefore the Parliament of Canada which was otherwise to provide. It did otherwise provide by the Act of 1873, which Act it afterwards altered, and then passed the Act now in question. So far it would appear to their Lordships very difficult to suggest any ground upon which the competency of the Parliament of Canada so to legislate could be called in question. But the ground which is suggested is this, that it has seemed fit to the Parliament of Canada to confer the jurisdiction necessary for the trial of election petitions upon Courts of ordinary jurisdiction in the provinces, and it is said that although the Parliament of Canada might have provided in any other manner for those trials, and might have created any new Courts for this purpose, it could not commit the exercise of such a new jurisdiction to any existing Provincial Court. After all their Lordships have heard from Mr. Benjamin, they are at a loss to follow that argument, even supposing that this were not in truth and in substance the creation of a new Court. If the subject-matter is within the jurisdiction of the Dominion Parliament, it is not within the jurisdiction of the Provincial Parliament, and that which is excluded by the 91st section from the jurisdiction of the Dominion Parliament is not anything else than matters coming within the classes of subjects assigned exclusively to the Legislatures of the provinces. The only material class of subjects relates to the administration of justice in the provinces, which, read with the 41st sec-

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tion, cannot be reasonably taken to have anything to do with election petitions. There is therefore nothing here to raise a doubt about the power of the Dominion Parliament to impose new duties upon the existing Provincial Courts, to give them new powers, as to matters which do not come within the classes of subjects assigned exclusively to the Legislatures of the provinces. But in addition to that, it appears that by the Act of 1873 which, even by those Judges who are said to have disputed the competency of the Act of 1874, is admitted to have been competent to the Dominion Parliament, what appears to their Lordships to be exactly the same thing in substance, and not so very different even in form, was done. It was intended that when a Court of Appeal should be constituted for the Dominion, a Judge of that Court of Appeal should be the Judge in the first instance of election petitions, and three Judges of the same Court should have power to sit in appeal from any judgment of a single Judge. But it was necessary also to provide for the interval between the passing of the Act and the constitution of such a Court of Appeal; and that Act of 1873 provided that in the mean time the Judges of the existing Provincial Courts should exercise, under regulations contained in it, the same jurisdiction. It did not indeed say the Courts; it said the Judges of the Courts; and that is really in their Lordships' view the sole difference, for this purpose, between the Act of 1873 and the Act of 1874. The Act of 1874 in substance does the same thing, except that in the definition clause it uses this language: "The expression 'the Court,' as respects elections in the several provinces hereinafter mentioned respectively, shall mean the Courts hereinafter mentioned or any Judges thereof;" and then it mentions by their known names the existing Courts of the different provinces. When their Lordships go on to look at the provisions which follow in the Act, it is clear not only that a new jurisdiction is conferred upon those Courts, but that everything necessary for the exercise of that new jurisdiction is provided for, even the power to take evidence; it is said that a

single Judge in rotation, and not the entire Court, is to exercise that jurisdiction; and, in the 48th section,—“That on the trial of an election petition, and in other proceedings under this Act, the Judge shall, subject to the provisions of this Act, have the same powers of jurisdiction and authority as a Judge of one of the Superior Courts of Law or Equity for the province in which such election is held sitting in term or proceeding at the trial of an ordinary civil suit, and the Court held by him in such trial shall be a Court of Record.” Words could not be more plain than those to create this as a new Court of Record, and not the old Court with some superadded jurisdiction to be exercised as if it had been part of its old jurisdiction. And all that is said as to the employment of the same officers, or of any other machinery of the Court for certain purposes defined by reference to the existing procedure of the Courts, shews that the Dominion Legislature was throughout dealing with this as a new jurisdiction created by itself; although in many respects adopting, as it was convenient that it should adopt, existing machinery. Therefore their Lordships see nothing but a nominal, a verbal and an unsubstantial distinction between this latter Act, as to its principle, and those provisions of the former Act which all the Judges of all the Courts in Canada, apparently without difficulty, held to be lawful and constitutional.

Then their Lordships are told that some of the Judges of the Courts of First Instance have thought there was more of substance in the distinction than there appears to their Lordships to be, and have declined to exercise this jurisdiction. It has been said that five Judges have been of that opinion. On the other hand, two Judges of First Instance—I think both in the province of Quebec, the Chief Justice, in the present case, and in another case, Mr. Justice Caron, a Judge, whose experience on the Canadian Bench has been long, and whose reputation is high, have been of opinion that this law was perfectly within the competency of the Dominion Legislature, and they could see nothing in the distinction taken between the present law, as to its principle,

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and the former. And now the question has gone to the Court of Appeal, the Supreme Court of Canada, who, constituted as a full Court of four Judges, have unanimously been of that opinion; and nothing has been stated to their Lordships, even from those sources of information with which Mr. Benjamin has been supplied, and which he has very properly communicated to their Lordships; nothing has been stated to lead their Lordships at all to apprehend that there is any real probability that any Judge of the inferior Courts will hereafter dispute their obligation to follow the ruling of the Supreme Court, unless and until it shall be reversed by Her Majesty in Council; nothing has been said from which their Lordships can infer that any provincial Legislature is likely to offer any opposition to such a ruling on this question as has taken place by the Court of Appeal, unless, as has been said, it should at any future time be reversed by Her Majesty in Council.

Under these circumstances their Lordships are not persuaded that there is any reason to apprehend difficulty or disturbance from leaving untouched the decision of the Court of Appeal. Their Lordships are not convinced that there is any reason to expect that any of the Judges of the Court below will act otherwise than in due subordination to the appellate jurisdiction, or refuse to follow the law as laid down by it. If indeed the able arguments which have been offered had produced in the minds of any of their Lordships any doubt of the soundness of the decision of the Court of Appeal, their Lordships would have felt it their duty to advise Her Majesty to grant the leave which is now asked for; but, on the contrary, the result of the whole argument has been to leave their Lordships under the impression that there is here no substantial question at all to be determined, and that it would be much more likely to unsettle the minds of Her Majesty's subjects in the Dominion, and to disturb in an inconvenient manner the legislative and other proceedings there, if they were to grant the prayer of this petition, and so throw a doubt on the validity of the decision of the Court of Appeal below, than

if they were to advise Her Majesty to refuse it.

Under these circumstances their Lordships feel it their duty humbly to advise Her Majesty that this leave to appeal should not be granted, and that the petition should be dismissed.

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Solicitors—Flux & Co., for appellants.

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1880. } THE QUEEN v. MANOEL DOS  
May 6. } SANTOS CASACA AND OTHERS.

*Sierra Leone—Slave Trade—Treaty with Portugal—Right of Search—High Seas.*

*By treaty between England and Portugal for suppressing the slave trade the contracting parties agreed that the ships of each nation should have the right to search and detain vessels of the other nation during the voyage, and that certain articles found on board should be prima facie evidence that a vessel was engaged in the slave trade, and that if any such articles were found in any vessel detained no compensation should be granted for such detention:—Held, that this provision relates only to vessels upon the high seas, and does not extend to vessels in a foreign port or in foreign territorial waters.*

This was an appeal from the Vice Admiralty Court of Sierra Leone, awarding damages, expenses and costs to the respondents against the appellants.

The decree was made in a cause brought by the appellants against the Portuguese brig or vessel called the *Ovarense*, whereof the respondent Manoel dos Santos Casaca was master, and the other respondents were the owners, and against her tackle, and the goods on board the same, and against three alleged male slaves, Grando, Panik and Yoroba, seized by one James Craig Loggie as liable to forfeiture under the provisions of the statutes 5 George 4. c. 113, and the Slave Trade Act, 36 and 37 Vict. c. 88.

The *Ovarense* was seized on the 5th

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day of December, 1876, whilst lying at anchor in the harbour and port of Freetown, in Sierra Leone.

On the 11th day of December, 1876, a monition issued to Manoel dos Santos Casaca, and to all persons, to appear, and shew cause why the *Ovarense* should not be forfeited. The respondent Manoel dos Santos Casaca filed a claim on behalf of himself and the other respondents the owners as aforesaid of the brig for the ship, her tackle, apparel and furniture, and also on behalf of the charterer of the ship at the time of the seizure, and for the goods, wares and merchandise, and moneys, and for three boys called slaves on board the ship at the time of seizure, and for all such costs, charges, demurrage and expenses which had arisen from the seizure.

The appellants brought in their libel, which alleged that the brig *Ovarense*, being in the harbour of Freetown, in British waters, was engaged in and fitted out for the slave trade, having on board three slaves and a larger quantity of water than was requisite for the consumption of the crew of the ship as a merchant vessel, and an extraordinary number of empty casks for which no certificate was produced, that security had been given that these casks were for lawful traffic; and also seventy-three bags of rice and thirty-two mats, such rice and mats being as alleged more than necessary for the use of the crew; that the ship had shackles concealed on board on her arrival; that the ship was engaged in the slave trade; that the aforesaid three slaves were carried away by Francisco Ferreira de Moraes from Cape Palmas, to be dealt with as slaves; and that the said ship and slaves should be forfeited, and the said Manoel dos Santos Casaca condemned in costs.

On the 24th day of January, 1877, the respondents filed their plea, alleging that the ship was not engaged in or fitted out for the slave trade, but was an emigrant vessel, duly licensed as such, and that the three persons on board were not slaves, but free immigrants, destined for the Portuguese island of St. Thomas, where slavery did not exist; that the rice was in the brig's manifest; that the

thirty-two mats were old mats, which had been left in the said brig from the last voyage, having been used to line the said brig when laden with coffee, as is usual; that of the water two tanks and nine puncheons were in the manifest, and the remainder had been taken on board in the harbour of Freetown after the arrival of the said brig; and that of the empty casks some had contained stores, and the remainder had been taken on board in the said harbour of Freetown after the arrival of the said brig, and that therefore the certificate mentioned in the libel was not required by law until the said brig cleared out of the said harbour, and that there never were any shackles on board; and the plea prayed that the suit should be dismissed, and the brig, tackle and goods and the three alleged slaves should be restored and the seisor condemned in costs, losses, damages, demurrage and expenses.

The learned Judge decreed the restoration of the brig *Ovarense*, her tackle and apparel, and the goods and effects on board, and of the two surviving kroomen alleged to be slaves, one of the three having died, with damages and expenses against the seisor, to be paid by him to the owners and also to the charterers of the vessel, with full costs of suit.

From this decree the appeal was brought.

*The Attorney-General (Sir J. Holker) and Mr. Dicey*, for the appellant.—The vessel contained articles declared by treaty to be *prima facie* evidence of a vessel being engaged in the slave trade. Under these circumstances the detention is lawful and no compensation can be claimed in respect of detention. Under all the circumstances it was the duty of the Vice-Admiralty Court to have issued a certificate under the Customs Consolidation Act, 1876, that there was reasonable and probable cause for the seizure of the brig. They referred to *The Ricardo Schmidt* (1); *Widge v. Berkeley* (2); 36 & 37 Vict. c. 88.

*Mr. Butt, Mr. Clarkson and Mr. E.*

(1) 4 Moo. P.C. N.S. 121; 36 Law J. Rep. P.C. 3.

(2) 6 Ad. & E. 643.

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*Law*, for the respondents.—The ship in question was not liable to search unless by treaty. The Act of Parliament expressly exempts vessels of a foreign state from the operation of the slave trade Act unless such right of search and detention is given by treaty. The treaty between England and Portugal only confers the right of search and detention on the high seas.

SIR ROBERT J. PHILLIMORE delivered the judgment of their Lordships (3).

This is an appeal from so much of a decree of the learned Judge of the Vice-Admiralty Court of Sierra Leone as awarded damages, expenses and costs to the respondents against the appellants. The decree was made in a cause brought by the appellants against the Portuguese vessel called the *Ovarense*, of which the respondent Manoel dos Santos Casaca was master, and the respondents Manoel Roderigues Formigal and Fernando Oliveira de Bello, of Lisbon, merchants, were the sole owners, and against her tackle, apparel and furniture, and the goods, wares, merchandise and moneys on board the same, and against three alleged male slaves, Grando, Panik and Yoroba, seized by James Craig Loggie as liable to forfeiture under the provisions of the statutes 5 George 4. c. 113, and 36 and 37 Vict. c. 88 (The Slave Trade Act, 1873).

The *Ovarense* was seized by James Craig Loggie on the 5th day of December, 1876, whilst lying at anchor in the harbour and port of Freetown, in Sierra Leone.

Mr. Loggie was duly authorised by the Governor of Sierra Leone to seize, detain and arrest all vessels which should or might be liable to be forfeited for any offence committed against the provisions of the said Acts of Parliament.

The appellants proceeded by libel, and alleged that the brig *Ovarense*, being in the harbour of Freetown, in British waters, was engaged in and fitted out for the slave trade, having on board three slaves and a larger quantity of water

than was requisite for the consumption of the crew of the brig as a merchant vessel, and an extraordinary number of empty casks for which no certificate was produced that security had been given that these casks were for lawful traffic; and also seventy-three bags of rice and thirty-two mats, such rice and mats being as alleged more than necessary for the use of the crew; and that the brig had shackles concealed on board on her arrival, which were afterwards removed; that Manoel dos Santos Casaca and Francisco Ferreira de Moraes were not engaged in emigration according to law, but were engaged in the slave trade; that the aforesaid three slaves were carried away by Francisco Ferreira de Moraes from Cape Palmas, to be dealt with as slaves; and they prayed that the said ship and slaves should be forfeited, and Manoel dos Santos Casaca condemned in costs.

In reply, the respondents filed their plea, alleging that the said brig was not engaged in or fitted out for the slave trade, but was an emigrant vessel, duly licensed as such, and that the three persons on board were not slaves, but free immigrants, destined for the Portuguese island of St. Thomas, where slavery did not exist; that the rice was in the brig's manifest; that the thirty-two mats were old mats which had been left in the said brig from the last voyage, having been used to line the said brig when laden with coffee, as is usual; that of the water two tanks and nine puncheons were in the manifest, and the remainder had been taken on board in the harbour of Freetown after the arrival of the said brig; that of the empty casks some had contained stores, and the remainder had been taken on board in the said harbour of Freetown after the arrival of the said brig, and that therefore the certificate mentioned in the libel was not required by law until the said brig cleared out of the said harbour; and that there never were any shackles on board; and the plea prayed that the suit should be dismissed, and the brig, tackle and goods and the three alleged slaves should be restored, and the seizer condemned in costs, losses, damages, demurrage and expenses.

(3) Sir James W. Colville; Sir Robert J. Phillimore; Sir Barnes Peacock; and Sir Montague E. Smith.

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It may be as well to dispose at once of a point which was raised on the argument that the Judge had not certified under the Customs Consolidation Act, 1876, 5 & 6 Will. 4. c. 60. s. 267, that there was reasonable cause for the seizure of the brig. Their Lordships are clearly of opinion that the provisions of the Act in question do not in any way affect the present case.

A great many witnesses were examined both on behalf of the seizer and of the claimant. The evidence was generally of an unsatisfactory kind, and resulted in a great conflict of testimony.

But after taking some time to consider the written depositions and documentary evidence, the learned Judge of the Vice-Admiralty Court, on the 9th of November, 1877, pronounced judgment in favour of the respondents (the then claimants), and "decreed the said brig, goods, wares, merchandise and two of the said three boys, Grando and Yoroba, called slaves, surviving at the time of the passing of the said sentence, to be restored to the claimant, on behalf of himself and of Manoel Rodrigues Formigal and Fernando Oliveira de Bello for the brig, her tackle, apparel and furniture, and on behalf of the said Francisco Ferreira de Moraes for the goods, wares, merchandise and moneys, and for two of the said three boys called slaves, Grando and Yoroba, surviving at the time of the passing of the said sentence, and condemned the said seizer in costs and damages."

From this condemnation in costs and damages, though not from the release of the ship herself, the seizer has appealed. In arguing the case before the Court, his counsel have maintained that there was evidence which would have justified the condemnation of the ship, though in the absence of proof of the guilty knowledge of the owners such a condemnation according to the law laid down upon the subject could not be enforced. They have, nevertheless, used the evidence which, as it was alleged, ought to have enured to the condemnation of the ship, in support of his claim to be relieved from that part of the sentence which condemned him in costs and damages.

There are two questions of mixed law

and fact which their Lordships are called upon to decide. In order to arrive at this decision it becomes necessary to consider and construe some of the statutes relating to the slave trade, and the treaty as to this subject between England and Portugal. And first with regard to the statutes:—

The learned Judge of the Court below rightly observed that—

"Before the passing of the Act 36 & 37 Vict. c. 88, the Statute 5 Geo. 4. c. 113 was the law by which we were to be guided in cases of slave dealing within British waters and jurisdiction, and under that law, and in accordance with decisions pronounced in cases coming under it, the captors were bound to prove, in order to condemn the vessel, not only that she was actually engaged in the slave trade or fitted out for the purposes of the slave trade, but that the owners of the ship were cognisant of the fact or had a guilty knowledge thereof, and that the owners of the cargo on board had also a guilty knowledge of the fact to justify a forfeiture of their goods, but that if there was probable cause for the seizure, that is, if from all the surrounding circumstances there was, to a reasonable mind, a fair and reasonable suspicion that the vessel was engaged in or fitted out for the purpose of the slave trade, then although the vessel were restored no damages could be awarded against the seizer."

The next statute which has to be considered is the 6th and 7th Vict. c. 53, which came into operation August, 1843. That statute carried into effect a treaty between England and Portugal for the suppression of the traffic in slaves, which had been concluded on the 3rd of July, 1842.

The first and second articles of the treaty, which is set forth in the schedule to the Act, are as follows:—

"I. The two high contracting parties mutually declare to each other that the infamous and piratical practice of transporting the natives of Africa by sea for the purpose of consigning them to slavery is and shall for ever continue to be a strictly prohibited and highly penal crime in every part of their respective dominions,

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and for all the subjects of their respective Crowns.

"II. The two high contracting parties mutually consent that those ships of their royal navies respectively which shall be provided with special instructions, as hereinafter mentioned, may visit and search such vessels of the two nations as may upon reasonable grounds be suspected of being engaged in transporting negroes for the purpose of consigning them to slavery, or of having been fitted out for that purpose, or of having been so employed during the voyage in which they are met by the said cruisers; and the said high contracting parties also consent that such cruisers may detain, and send, and carry away such vessels in order that they may be brought to trial in the manner hereinafter agreed upon; and in order to fix the reciprocal right of search in such a manner as shall be adapted to the attainment of the objects of this Treaty, and shall at the same time prevent doubts, disputes and complaints, it is agreed that the said right of search shall be exercised in the manner and according to the rules following."

Certain articles are then described, which, if found on board of or in the equipment of any vessel visited in pursuance of the treaty, are declared to be *prima facie* evidence that the vessel was actually engaged in the slave trade, and by Article X. it is declared that—

"If any of the things specified in the preceding article shall be found in any vessel which is detained under the stipulations of this treaty, or shall be proved to be on board the vessel during the voyage on which the vessel was proceeding when captured, no compensation for losses, damages or expenses consequent upon the detention of such vessel shall in any case be granted either to her master, or to her owner, or to any other person interested in her equipment or lading, even though the mixed commission should not pronounce any sentence of condemnation in consequence of her detention."

Among these articles are mentioned shackles, bolts or handcuffs, an extraordinary number of empty casks, an extraordinary quantity of rice and mats. These are the articles specified in the libel.

They are also mentioned in the first schedule of 36 and 37 Vict. c. 88, as among the equipments which are *prima facie* evidence of a vessel being engaged in the slave trade.

This statute, entitled "An Act for consolidating with amendments the Acts for carrying into effect treaties for the more effectual suppression of the slave trade, and for other purposes connected with the slave trade," was passed on the 5th of August, 1873.

It is a statute which is by no means perspicuously worded, and which has not as yet undergone any judicial construction.

The 3rd section enacts that "where a vessel is on reasonable grounds suspected of being engaged in or fitted out for the slave trade, it shall," subject to certain restrictions, "be lawful" for certain authorised persons, among whom is, as in this case, the governor of a British possession, "to visit and seize and detain such vessel and to seize and detain any person found detained or reasonably suspected of having been detained as a slave, for the purpose of the slave trade, on board any such vessel," &c.

The first and principal question is whether the *Ovarens* was seized on reasonable grounds of suspicion of her being engaged in the slave trade.

What were the facts relating to this vessel at the time when she was seized? The first and not the least important fact is that she was seized in harbour and not upon the open seas. And here it may be well to cite the language of Lord Westbury delivering the judgment of the Privy Council in a similar case—*The Ricardo Schmidt* (1).

The law at that time stood, it is true, under 5 Geo. 4. c. 113, but the reasoning is not inapplicable to the present case.

"We have, therefore," his Lordship says, "no circumstances here to which any particular weight or force is to be given by law, as under the 5th and 6th Will. 4. c. 60 would be the case, but we have a case, to be judged of under all the circumstances, whether any person going on board a ship lying in the harbour of Sierra Leone and examining her—going over her—could from the mere

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circumstance of the number of water casks be warranted in arriving at the conclusion that this ship was intended to be engaged in the slave trade. I need not point out, what was very well commented upon by one of the counsel for the appellant, that there may be great necessity for laying down clear and definite rules, as they are laid down in the Statute 5 and 6 Will. 4. c. 60, for the purpose of guiding captors at sea, for there the transaction is of necessity a hurried one, admitting of no very minute examination; and the Legislature, therefore, defines certain things in that statute, which, if they are not plainly accounted for, shall constitute an amount of *probabilis causa* sufficient to exempt the captor from consequences even if the vessel be not condemned. But when you come to the case of a ship quietly lying at anchor in a British harbour, and having been there for some time, not manifesting the smallest indication of anxiety to quit the harbour, but actually and plainly engaged in *bona fide* trade within the harbour, the obligation on a seizer to justify what he has done is a very strict obligation, and one that cannot be discharged by a reference to circumstances which, *per se*, have not an overpowering weight on the mind at the time when the seizure was made."

The *Ovarense* arrived in the port of Freetown without any apparent circumstance of guilt attaching to her conduct. She remained there quietly. There was no restraint as to persons leaving or coming on board her. She seemed to have been in no hurry to get away. It certainly was, on the face of it, a strange thing to select a British port for the visit of a slave-trading vessel, in order, amongst other things, to take in an excessive quantity of water, and, as alleged, with some slaves actually on board.

The general defence on the part of the owners of the *Ovarense* is that she was equipped with the object of facilitating the immigration of free labourers from the West Coast of Africa into the Portuguese island of St. Thomas, and it must be borne in mind that many of the articles are *ancipitis usus*—that is, are equally necessary for the carrying on of the

guilty slave trade, and for the purpose of innocent immigration.

Slavery (even in the modified form established by a decree having the force of law of the 25th of February, 1869) had been abolished in St. Thomas by a law passed on the 29th of April, 1875, to come into operation a year after publication.

An immigration ship would, of course, require a greater number of empty casks and a greater quantity of water than would be necessary for the crew, and the presence of some shackles on board would be no necessary indication of slave trading.

It appears that the *Ovarense*, a brig of 309 tons, was chartered in September, 1876, by one De Moraes for the purpose of taking immigrants to St. Thomas, and, on the 26th of December, cleared out for the port of Liberia and Sierra Leone. The Governor of St. Thomas gave the captain a letter, addressed to the Portuguese Consul at Sierra Leone, informing him that the *Ovarense* was licensed to carry 368 freemen, or 400 men if a small half deck could be added to take water at Sierra Leone for that number. She sailed from St. Thomas, with a list of passengers signed by the proper Portuguese authority. On the 2nd of December, 1876, she arrived in the harbour of Freetown, Sierra Leone. She had taken in six Kroomen at Cape Palmas, three of whom were alleged to be slaves. On the 4th of December the captain entered his vessel at the Customs, and left with the acting Portuguese Consul the ship's papers. Early on the 5th of December Mr. Loggie came on board the *Ovarense*. He paid three visits to the vessel on that day, and at the last visit seized the vessel, and brought the three Kroomen on shore.

The Portuguese Consul swears that he received all the ship's papers soon after the arrival of the vessel in harbour. His evidence is as follows:—

"The captain came to me first on the 3rd of December, in the morning. I never went on board the *Ovarense*. I heard on the 5th of December she had been seized. On hearing this I went to the Custom House, and from thence to the Governor. I saw the collector before

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I went to the Governor. I went alone to the Governor officially as Consul for Portugal; it was Governor Kortright. I saw him. I had some official conversation with the Governor as to the *Ovareense*. I had seen the Governor officially before this on the 30th of November and 3rd of December, 1876, respecting the *Ovareense*. After this I left his Excellency. On the 6th of December I wrote a letter to his Excellency on the subject of the *Ovareense*, and to that letter I received an answer. On the same day I wrote a second letter to his Excellency, to which I received no answer. Loggie came to me about the *Ovareense* first on the 7th or 8th of December, but I am not certain on which day. He came alone. He applied to me for the papers of the *Ovareense*. He said he had come to the Portuguese Consul, not to his friend Beçaise, and wished to have the papers of the *Ovareense* shewn to him. I told him I could not shew them, because he brought no authority. I told him the best thing he could do would be to apply to the Governor, and on the Governor saying he (Loggie) might see the papers, I would hand the papers to the Governor. Nothing more passed, and Loggie went away. I never told Loggie, on that or any other occasion, 'that there was no certificate as aforesaid from the Custom House at the place from which the said master cleared outwards, stating that a sufficient or any security had been given by the owners of such vessel, that such extra quantity of casks and other vessels for holding liquid should only be used for the reception of palm oil or for other purposes of lawful commerce.' I never told him a word about this. I had no conversation with him about a certificate. Loggie came to me again about the *Ovareense*; this was about four or five days after the seizure, but I can't recollect the exact day. On this occasion he asked me to give him the ship's papers, because his proctor wanted to see them; and that he (Loggie) would give a receipt for them. This is what he told me at first. I refused to give the papers. Loggie then said that Mr. Lewis, his proctor, would give the receipt, and that I need not be afraid. I told him I was very sorry, but that all the papers he

required were in the Governor's hands; that I had handed them to the Governor, and that even if I had them I could not hand them either to himself or his proctor. Loggie did not come to me again about the *Ovareense*. I am sure he never came to me before the 7th of December to ask any information about the *Ovareense*. I might have seen Loggie on the 3rd of December, but not to speak to. I did not see him on the 4th of December, and I had no conversation with him before the 7th of December."

The papers lodged at the Consulate as before mentioned, and produced in evidence, were—

1. A royal passport, dated Lisbon, the 9th of June, 1870, with twenty-two *visés* thereon, shewing a trading of the *Ovareense* between the ports of Lisbon and Rio de Janeiro, Pernambuco, Bahia, and the Portuguese island of St. Thomé, the last *visé* being St. Thomé, the 25th of September, 1876, for a voyage to the ports of Liberia and Sierra Leone.

2. The brig's articles.

3. The charter-party between the owners and Moraes to take labourers to St. Thomas from the ports of Liberia and Sierra Leone, Moraes, the charterer, binding himself to furnish water casks and water, to make a half deck for an additional number of labourers to make up 400, the *Ovareense* being computed to carry without such additional half deck 368 persons, also to provide a person to take charge of these free labourers, and a doctor and medicine, and to pay monthly to the owners as freight one conto of reis, equal to 222*l.* 4*s.* 6*d.*

4, 5. The licenses to Moraes and the captain to import free labourers into St. Thomas already referred to.

6. The letter from the Governor of St. Thomas to the Portuguese Consul, here also already referred to.

If Mr. Loggie, before resorting to the serious step of seizing the ship, had taken the ordinary precaution of consulting the ship's papers and communicating with reference to them with the Consul and the captain, he could not have failed to see that she was licensed to import free labourers, which would account for the articles found in her, and that he would

*The Queen v. Manoel dos Santos Casaca.*

not be justified simply from the fact that such articles were on board her in seizing this foreign vessel "as being engaged in or fitted out for the slave trade within British jurisdiction." With regard to the allegation that the brig herself was constructed and furnished or fitted out to carry slaves, the ship's papers and the charter-party would have shewn, and there seems to have been no reasonable ground for disbelieving them, that she was chartered and intended to carry immigrants, and was not engaged in the slave trade. And, even if the original seizure could be justified, the subsequent detention of the vessel was wholly inexcusable.

Much stress was laid upon the presence on board the vessel of the three Kroomen alleged to be slaves, and the information concerning them which had been given to the seizer, as constituting reasonable grounds for the suspicion that she was a slaver. Their Lordships are of opinion that the appeal cannot be maintained on this ground. They have already observed that the seizer had the means, which he neglected, of informing himself of the true character of the vessel, and of the true condition of those Kroomen. Had he done so, and had even all the evidence which was afterwards given on his part touching those Kroomen been present to his mind (which it was not), all that he could reasonably have inferred was that the men in question had been, in some sort, kidnapped on board, with the object of carrying them to St. Thomas (an island where slavery had ceased to exist) as free labourers imported under the immigration law then prevailing. But such an inference, or belief, would not have justified the seizure or detention of the vessel under the treaty, or The Slave Trade Act, 1873, such supposed kidnapping, however reprehensible, being for a purpose other than that "of consigning the men to slavery." It may be that the immigration law of St. Thomas may not be sufficiently stringent, or that its provisions may not be duly observed; but defects in the law, or breaches of its provisions by Portuguese subjects, however deplorable, though they might be properly made the subject of diplomatic

remonstrance to the Portuguese Government, are not grounds for seizing a vessel under the Portuguese flag as a slaver within the meaning of the treaty and the statute. In saying this, their Lordships are assuming that on this part of the case the evidence given for the seizer was more credible than that opposed to it. That, however, was not the conclusion of the Judge below, and their Lordships are not prepared to say that he was wrong. The evidence, taken altogether, certainly affords grounds for the conclusion that the story of the kidnapping was a malicious fiction, got up by one of the other Kroomen who had been charged by Moraes with theft, and put under confinement.

There remains for consideration the 4th section of the 36 & 37 Vict. c. 88. That section is as follows:—

"Where any of the particulars mentioned in the first schedule to this Act are found in the equipment or on board of any vessel visited, seized or detained in pursuance of this Act, such vessel shall, unless the contrary be proved, be deemed to be fitted out for the purposes of and engaged in the slave trade, and in such case, even though the vessel is restored, no damages shall be awarded against the seizer under this Act in respect of such visitation, seizure or detention, or otherwise upon such restoration."

Much argument was addressed to their Lordships as to the effect and meaning of the terms contained in this section, and the case for the appellants was mainly, though by no means entirely, rested upon it, it being contended that the words "no damages shall be awarded" contained an enactment of positive law, which, whether harsh or not, left no option to the Court upon the matter, unless indeed the proviso at the close of the section rendered the enactment inapplicable to this foreign vessel. The words of that proviso have been most carefully considered by their Lordships. They are as follows:—

"Provided that this section shall not extend to the vessel of any foreign state, except so far as may be consistent with the treaty made with such state."

This provision contains a plain proposition of international law, with respect

*The Queen v. Manoel dos Santos Casaca.*

to the general effect of the law of one foreign state upon the vessel of another.

It has been contended, however, that Portugal has, by treaty with England, consented that the particular articles mentioned in the first schedule of this statute, when found on board a Portuguese vessel in port, shall be considered as *prima facie* evidence of her being engaged in the slave trade. But upon a careful examination of the Portuguese treaties, their Lordships are of opinion that this consent on the part of Portugal relates only to vessels upon the high seas, and does not extend to vessels in a foreign port or foreign territorial waters. All the provisions in the treaties point to this conclusion. The visitation is to be conducted by a naval officer whose rank is carefully specified, and with a view formerly of bringing in the vessel for adjudication before a Court of Mixed Commission, and now of sending her to the nearest or most accessible Portuguese colony, or handing her over to a Portuguese cruiser, if one be available in the neighbourhood of the capture. Their Lordships are of opinion, therefore, that this 4th section cannot be extended to a Portuguese vessel lying in British waters, inasmuch as it is not consistent with the treaty made with that state.

Upon the whole, it appears to their Lordships that the learned Judge of the Court below came to a right conclusion, both as to the facts and the law applicable to them, and they will humbly advise Her Majesty that the appeal be dismissed with costs.

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Solicitors—The Solicitor for the Treasury, for appellant; Gregory, Rowcliffes & Co., for respondents.

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1879. } JOSEPH TRIMBLE (*appellant*)  
Dec. 16. } v. GEORGE HILL (*respondent*).

*New South Wales—Wager Contract, Validity of—14 Vict. No. 9.*

*The 14 Vict. No. 9 provides that all contracts by way of wagering shall be void, and that no suit shall be brought to recover money deposited to abide the event of a wager:—Held, that a contract to run one horse against another is a wagering contract within the statute, but that a party who revokes the authority of a stakeholder before the event may recover the deposit.*

*Where the provisions of a Colonial statute are identical with those of an Imperial statute the Colonial Courts should follow the decisions of Courts of Appeal on the Imperial statute.*

This was an appeal from a judgment of the Supreme Court of New South Wales.

The action was commenced by the appellant against the respondent in the District Court, to recover the sum of 200*l.* deposited by the appellant with the respondent to abide the event of a race between two horses. Before the time fixed for the race the appellant gave the respondent notice that the match was off, and required the respondent to return to him the amount of the said deposit. The respondent refused to pay back the money.

The cause was heard on the 30th of May, 1877, before the District Judge, and the appellant was non-suited, on the ground that the money sought to be recovered had been deposited to be paid to the winner of a wager within the meaning of the Colonial Act, 14 Vict. No. 9, s. 8 (which is identical with the Imperial Act, 8 & 9 Vict. c. 109. s. 18), and that the action would not lie.

The appellant appealed to the Supreme Court of New South Wales, but the appeal was dismissed.

The appellant obtained special leave to appeal from the judgment of the Supreme Court.

*Mr. J. O. Mathew and Mr. Barnes, for the appellant.*—The money sought to be recovered had been deposited under a contract which was not enforceable. The

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*Trimble v. Hill.*

appellant was therefore under the circumstances entitled to recover it back. Upon the revocation of the respondent's authority to retain the money, the respondent ought to have paid it back. The judgment of the Supreme Court was at variance with that of the Court of Appeal in *Diggles v. Higgs* (1). They also referred to *Hampden v. Walsh* (2) and to *Batty v. Marriott* (3).

The respondent did not appear.

SIR MONTAGUE E. SMITH delivered the judgment of their Lordships (4).—This appeal arises in an action brought by the appellant, Mr. Trimble, to recover from the defendant a sum of 200*l.* deposited with him to abide the event of a match between a horse of the plaintiff and another horse belonging to Mr. Glenister. The agreement under which the deposit was made, or so much of it as is material, is in these terms: "4th April, 1877. Mr. Glenister agrees to run Gaffer Grey against Mr. Trimble's Beacon for the sum of 500*l.* a side, 200*l.* of which is deposited in the hands of George Hill, which said deposit money will be forfeited unless the whole of the stake is made good on Monday evening, the 10th day of April, between the hours of 8 and 10 P.M." Before the day fixed for the race, the plaintiff gave notice to the defendant that he revoked the authority to pay over the money, and demanded the return of it. The question upon these short facts arises on the 8th section of the Colonial Act, 14 Vict. No. 9, which is in the same terms as the 18th section of the Imperial Act, 8 & 9 Vict. c. 109. The enactment is: "And be it enacted that all contracts or agreements, whether by parole or in writing, by way of gaming or wagering, shall be null and void, and that no suit shall be brought or maintained in any Court of Law or Equity for recovering any sum of money or valuable thing

alleged to be won upon any wager, or which shall have been deposited in the hands of any person to abide the event in which any wager shall have been made: Provided always, that this enactment shall not be deemed to apply to any subscription or contribution or agreement to subscribe or contribute for or towards any plate, prize or sum of money to be awarded to the winner or winners of any lawful game, sport, pastime or exercise." This enactment annuls all contracts by way of gaming or wagering; thus abolishing the distinction between legal and illegal wagers which had frequently raised vexed questions for the consideration of the Courts. All wagers, so far as actions to enforce them are concerned, are declared by it to be null and void. There can be no doubt that the contract in question is a contract by way of wagering; it is in fact a wager, as stated by the Chief Justice below, on one horse against the other. The only question is whether it is taken out of the operation of the general enactment by the proviso. The meaning of this proviso has been considered in several cases in the English Courts. In the case of *Batty v. Marriott* (3), where an agreement analogous to the present was made and money deposited to abide the event of a foot-race, it was held that a foot-race being a legal pastime, the agreement was within the proviso. This decision did not meet with entire acquiescence when it was brought before the Courts in subsequent cases. It is unnecessary to refer to these cases, because the decision itself has been distinctly overruled by the Court of Appeal in the recent case of *Diggles v. Higgs* (1). In that case the agreement related to a walking match, and was to the same effect as that in the present action. It was decided that an agreement of this kind, being a contract of wager, was not an agreement to subscribe or contribute for or towards any prize or sum of money within the true meaning of the proviso, which, it was held, applied to subscriptions and contributions other than wagers. It is not disputed by the two Judges forming the majority in the Court below that this decision was directly in point, but their

(1) 46 Law J. Rep. Exch. 721; Law Rep. 2 Ex. D. 422.

(2) 45 Law J. Rep. Q.B. 238; Law Rep. 1 Q.B. D. 190.

(3) 5 Com. B. Rep. 818; 17 Law J. Rep. C.P. 215.

(4) Sir James W. Colville; Sir Barnes Peacock; Sir Montague E. Smith; and Sir Robert P. Collier.

*Trimble v. Hill.*

own opinions not agreeing with it they declined to follow its authority.

Their Lordships think the Court in the colony might well have taken this decision as an authoritative construction of the statute. It is the judgment of the Court of Appeal by which all the Courts in England are bound, until a contrary determination has been arrived at by the House of Lords. Their Lordships think that in colonies where a like enactment has been passed by the Legislature the colonial Courts should also govern themselves by it. The Judges of the Supreme Court, who differed from the Chief Justice, were evidently reluctant to depart from their own previous decision in a case of *Hogan v. Curtis*, but they might well have yielded to the high authority of the Court of Appeal which decided the case of *Diggle v. Higgs* (1), as the English Court which decided *Batty v. Marriott* (3) would have felt bound to do if a similar case had again come before it.

Their Lordships would not have felt themselves justified in advising Her Majesty to depart from the decision in *Diggle v. Higgs* (1) unless they entertained a clear opinion that the construction it has given to the proviso in question was wrong, and had not settled the law; since in their view it is of the utmost importance that in all parts of the empire where English law prevails, the interpretation of that law by the Courts should be as nearly as possible the same. Their Lordships, however, do not dissent from, nor do they desire to express any doubt as to the correctness of, that decision, which, it may be assumed, has settled the vexed question of the construction of a not very intelligible enactment.

The case of *Diggle v. Higgs* (1) also decided that the statute does not preclude the party who has revoked the authority given to the stakeholder from recovering the money he had deposited; the Court of Appeal agreeing with a previous decision to the same effect of the Court of Queen's Bench in *Hampden v. Walsh* (2).

Their Lordships find that by the Colonial Act, 22 Vict. No. 18, s. 94, the

Supreme Court is empowered, upon an appeal from a District Court, to order judgment to be entered for either party; and they are of opinion, the facts being undisputed, that the judgment, for the reasons above given, should have been entered for the plaintiff.

Their Lordships will therefore humbly advise Her Majesty to reverse the judgment of the Supreme Court, and to direct that the nonsuit be set aside, and judgment entered for the plaintiff for the sum of 200*l*.

The respondent must pay the costs of this appeal.

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Solicitors—Young, Jones, Roberts & Hall, for appellant.

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1879. }  
Dec. 16. } *In re NICOLLE.*

*Jersey—Curatelle—Prodigality—Doléance.*

*By the law of Jersey the Court has no power to continue a "curatelle" in respect of property when such "curatelle" is unnecessary in respect of person.*

This was a petition for special leave to appeal from two orders of the Royal Court of Jersey, or that such orders might be enquired into on the hearing of the petition by way of "doléance."

The facts are fully stated in the judgment of their Lordships.

*Mr. Millar*, for the petitioner.

SIR JAMES W. COLVILLE delivered the judgment of their Lordships (1).

This case comes before their Lordships on the petition and doléance of Mr. Charles Nicolle of St. Heliers in Jersey. It appears that in 1867 the Royal Court of Jersey appointed a "curateur" of the person and property of the petitioner on the ground that he was a person of in-

(1) Sir James W. Colville; Sir Barnes Peacock; Sir Montague E. Smith; and Sir Robert P. Collier.

*In re Nicolle.*

temperate and prodigal habits. It must be assumed that all the proceedings in the case were duly had, and that the order was made in accordance with the law of Jersey, which will be afterwards considered. On the 9th of November, 1878, he presented a remonstrance to the inferior number of the Royal Court, stating that the reasons for his interdiction had ceased to exist, and that he was then perfectly fit to have the care of his own person and the management of his property, and praying that this curateur, the persons named as the surviving electors of the curatelle, and also a sufficient number of the principal inhabitants of the parish of St. Heliers where the petitioner was domiciled, should be duly summoned, in order that in the presence of the said curateur and of the said electors, and after having heard the said principal inhabitants (les dits principaux), the Court might be pleased to annul the said "curatelle," to "rehabilitate" the remonstrant, and to restore him to the enjoyment of his civil rights, and for such other relief as the Court should consider that the case deserved.

The Court proceeded to summons these persons, the evidence of the principal inhabitants was taken in the usual way, and it certainly went to establish that the habits of the petitioner were reformed, and that he was of sound mind; but the Court came to the conclusion that although a proper case for releasing his person from the curatelle had been established, there was ground for maintaining the curatelle so far as it related to the administration of his property. The order, which bears date the 28th of December, 1878, is in these words: "Après avoir entendu par le moyen de son Avocat, et conformément aux conclusions dudit Sieur Procureur Général de la Reine, paraissant que la conduite dudit Sieur Charles Nicolle est depuis quelque temps devenue telle qu'il est apte à avoir le libre soin de sa propre personne, mais qu'il n'est pas suffisamment établi qu'il y ait lieu de le réintégrer dans l'administration de son bien; qu'en conséquence il y a lieu de le réhabiliter en ce qui concerne la liberté de sa propre personne, et de le maintenir sous interdiction quant à la gestion de son

bien. Partant la Cour a ordonné que le dit Sieur Charles Nicolle demeure présentement sous la curatelle dudit Clement Nicolle Ec<sup>r</sup> en ce qui concerne son bien seulement." From this order the petitioner appealed to the Full Court, which, after again summoning and itself examining the "curateur," "electeurs" and "principaux" on the 22nd of May, 1879, passed the following order: "Après que le dit curateur, et ces électeurs, et les dits principaux ont été entendus par serment, la Cour, par la pluralité des opinions, et conformément aux conclusions du dit Procureur Général de la Reine affirmant la décision du Nombre Inférieur, a jugé qu'il y a lieu de maintenir le dit Rémonstant sous interdiction en ce qui concerne l'administration de son bien."

The petitioner being dissatisfied with these orders, and the Royal Court of Jersey having refused to give him leave to appeal against them, presented a petition to Her Majesty in Council praying that he might have special leave to appeal against the orders in question in the usual way, or else that the merits of the case might be enquired into on the hearing of the petition by way of *doléance*, and that the orders might be reversed or varied, and the petitioner reinstated in the management of his property. When this petition first came before this board, their Lordships conceived that a case had been made for further enquiry into the correctness of the orders impeached; but thought that the proceeding by way of *doléance* would afford the least expensive and probably the most convenient mode of trying the question. This mode of proceeding, though termed "odious" by the Code of 1771, has been approved of and recommended by Her Majesty's Commissioners on the law of Jersey; and their Lordships need hardly say that its adoption on the present occasion implies no disrespect towards the Royal Court.

The learned Judges of that Court have made a return in the ordinary form, and their Lordships have now to consider how far that justifies the orders that have been made, or whether the petitioner is entitled to any and what relief in respect of them.

Their Lordships will assume that the

*In re Nicolle.*

Court was justified in refusing the petitioner leave to appeal, inasmuch as according to the law and practice of the island no appeal in such cases lies as of right to Her Majesty. That of course does not prevent Her Majesty from granting, by virtue of her prerogative, either special leave to appeal or the relief now sought by way of *doléance*. The substance of what the learned Judges have returned to this board is as follows: They say, "In the course of the enquiry it appeared that Charles Nicolle had not of late addicted himself to excessive drinking, and that his conduct at the hospital had been regular and unexceptionable. With this evidence before them the inferior number of the Royal Court unanimously, and on appeal the majority of the Jurats present, were of opinion that while there were sufficient grounds to relieve Charles Nicolle from *curatelle* as regarded his person, it was expedient, in the interest of his children, that it should be maintained as regards his property for some time longer. It is obvious that the opinion of the *principaux* who considered him capable of having the management of his property is founded on no facts within their knowledge, and it is to be remarked that of the three whose affidavits are annexed to the petition, one Dr. Le Crouier is careful not to make any statement on that point, but confines himself to testifying that Charles Nicolle has ceased to be a drunkard, that his conduct has for the last three years been exemplary, and that he is a man of perfectly sound mind. Not a single circumstance was brought under the notice of the Court of a character to lead to the belief that Charles Nicolle could be safely trusted with the care of his family and the management of his property. Not only during the last twelve years has he administered nothing, but during ten years of that time he has not sought to help himself or his children in the slightest degree, with the exception of six months, when an attempt was made, as has been said, to find him employment with a farmer, but without success. He has remained in the hospital in voluntary idleness, and even since he has found employment in the hospital he does not

appear to have done anything for his children, to have shewn any solicitude for their education, or to have taken any interest in their welfare. The Court, therefore, thought it was expedient to delay restoring to him the management of his property for a short time longer—that is, until his youngest children have completed their apprenticeship and are able to provide for themselves." Then they state the general law: "It is to be observed that by the law of this island recourse may be had to a *curatelle*, not only in cases of lunacy and mental incapacity, but whenever through drunkenness, prodigality, misconduct or incapacity of any other kind it may become necessary or expedient to subject a person to control in the management of his property."

Their Lordships conceive that this statement as to the law is somewhat too wide. They have been referred to the report of the Royal Commission on the law of Jersey, and to the evidence taken under it, and the conclusion to which they have come is that, according to the law under which these proceedings have been had, it is necessary, in order to place a man under "*curatelle*," in the first instance, to satisfy the Court not only that he is prodigal or likely to mismanage his property, but that he is so by reason of his habitual intemperance in the matter of drink. Mere prodigality without proof of habitual drunkenness will not suffice to support the original grant of an interdiction; and in order to establish the intemperance the Court must have not merely the evidence of relatives (*les electeurs*), but the presentment after examination of the six *principaux*. A similar procedure seems to be adopted on an application like the present, for the removal of the interdiction, and the reinstatement of the party in his civil rights. Six *principaux* are again summoned and examined. In the present case *les principaux* are agreed that the petitioner has been cured of his intemperance; and the Court were so far satisfied of that that they rehabilitated him in all that concerns the liberty of his person. Their Lordships fail to see that when there has been such a reformation

*In re Nicolle.*

of the intemperate habits as justifies the reversal of the interdiction in respect of the person, there exists any legal power in the Court to continue the curatelle as to the property upon a mere suggestion that it will be better and more expedient for the family so to do. The Royal Court of Jersey has no doubt made the orders under consideration from an honest conviction that it would be better for the children that the property should continue to be administered by the curator rather than by the applicant himself; but their Lordships cannot find any law which authorised the Court to deprive the petitioner, if cured of his intemperance, of the management of his property upon any consideration of that kind. If the law had clearly given them such a discretion, their Lordships would have been slow to interfere with its exercise; but they are bound to see that in the administration of this exceptional, though possibly wholesome law, the Judges do not exceed the limits of their authority.

Under these circumstances their Lordships think that a sufficient case has been made out upon this petition and doléance to justify them in humbly recommending Her Majesty to reverse the orders of the 28th of December, 1878, and the 22nd of May, 1879, to declare that the petitioner having been found to be now fit to have the free use of his own person, and to be released from the curatelle as to his person, ought also to be reinstated in the management of his property, and to direct the Royal Court to pass an order in the usual form for the annulment of the curatelle, the rehabilitation of the petitioner and his reinstatement in the enjoyment of all his civil rights.

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Solicitors—Jones, Blaxland & Sons, agents for Philip Baudain, Jersey, for the petitioner.

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1880. { MARIE ANNE CLAIRE SYMES and  
Feb. 25. { her husband (appellants) v.  
                  { MARIE ANGELIQUE CUVILLIER  
                  { and her husband (respondents).

*Lower Canada — Coutumes de Paris — Ordinance 1731 — Donation — Revocability — Birth of Children.*

*By the Coutume de Paris, which was the law of Lower Canada prior to the Civil Code, donations are not revoked by the birth of children when the property given is not of large value in relation to the entire estate of the donor, and it can be presumed from the circumstances that the gift would have been made if the donor had contemplated the birth of children.*

*The Ordinance of 1731, Sur les Donations, was not a declaration of existing law. It did not take effect in Lower Canada, not having been registered in that province.*

This was an appeal from a judgment of the Court of Queen's Bench of the Province of Quebec, Canada.

The action was brought to recover instalments, forming portions of an annual sum of 150*l.* which the appellant had before her marriage bound herself to pay to her aunt, the respondent, by a notarial deed of gift, dated the 29th of May, 1866.

The facts were as follows:—

The father and mother of the appellant Marie died during her minority, and at her coming of age she came into the possession of a large amount of real and personal property, derived from both parents, the larger part coming to her from her father, but a considerable portion had formed part of her mother's fortune.

Upon coming into possession of her property the appellant, Marie, desired that a portion of it should be applied for the benefit of her mother's family. A deed was accordingly prepared by her legal adviser.

The deed made a gift of an annual sum of 150*l.* to the respondent, Madame Delisle, a sister of the appellant's mother, in trust for her five daughters (cousins of the appellant) in equal shares.

The deed provided that after the death of the respondent the appellant should continue to pay the annual sum to each

*Symes v. Ouvillier.*

of the five daughters of the respondent in equal shares, and that on the death of any one of them leaving issue the portion of the capital representing her share should belong to her children, if more than one, in equal shares, or in the event of the decease of any one of them without issue her share of the income should be divided amongst the surviving sisters equally for their respective lives, and the corresponding share of the capital should be divided equally amongst the children of such surviving sisters *per stirpes*.

On the 26th of August, 1872, the appellant married the Marquis de Bassano, and prior to the 25th of February, 1876, two daughters were born of the marriage, the first on the 17th of November, 1873, and the second on the 27th of November, 1874.

The appellants paid the sum of 150*l.* up to the 29th of November, 1875, but they refused to pay the instalments falling due on the 25th of February and the 25th of May, 1876, and it was to recover the amount of these two instalments that the action was brought.

The appellants refused to pay the two instalments on the ground that by Canadian law the deed of gift contained an implied condition whereby it was revoked upon the birth of children.

The declaration set out the deed and the non-payment of two instalments, and prayed that the appellant might be condemned to pay to the respondent the sum of \$300 with interest and costs.

By her plea, the appellant admitted the execution of the deed of gift, but pleaded that it was revoked by the birth of her children. She further alleged that her husband was a foreigner, ignorant of the law of the province of Quebec, that since her marriage she and her husband had been domiciled in Europe, that it was not till their arrival in Canada in January, 1876, that either of them became aware that the birth of children could have the effect of revoking the deed of gift, and that all moneys which had been paid under the deed since the birth of children had been paid in ignorance of the law, and without any intention of ratifying or reaffirming the gift.

By answer to the plea, the respondent

denied that the mere fact of the birth of children had the effect of revoking the gift. The answer further alleged that at the time of the gift the appellant owned real and personal property in Canada and elsewhere of great value, and that the gift of a comparatively small sum for the benefit of her five cousins was not by law revoked by the subsequent birth of children.

The case was heard in the Superior Court, and judgment was delivered in favour of the appellant, the learned Judge holding that the deed of the 29th of May, 1866, was revoked on the ground contended for by the appellant.

The respondent thereupon appealed from the judgment of the Superior Court. On the 22nd of June, 1878, the Court of Queen's Bench gave judgment reversing the judgment of the Superior Court, and ordering the appellant to pay to the respondent the sum of \$300 with interest and costs.

From this judgment the present appeal was brought.

*Mr. A. Wills and Mr. William Wills*, for the appellants.—The deed of gift was executed before the Civil Code of Canada became law. It was subject to the law of revocation in force in Canada prior to that date. The case is therefore governed by the *Contume de Paris*, which was in force in Canada at the time. It is a general doctrine of that law that all gifts are revoked by the subsequent birth of children to the donor. The law of France was taken from the rule of the Roman law called "*Si unquam*." This was the common law of France. The respondents can shew no ground for exempting the gift in question from the operation of that doctrine. In 1731 the Ordinance of Louis XV. *Sur les Donations* was promulgated in France. This Ordinance was declaratory of the existing law, and enjoined obedience "*dans tout notre royaume terres et pays de notre obeissance*." It was, therefore, applicable to Lower Canada. They referred to the *Code of Justinian*, Lib. VIII., 56, s. 10; *Ortolan's Legislation Romaine*, s. 635; *Pothier*, vol. viii., p. 408; *Demolombe*, *Code Napoléon*, vol. xx.; *Œuvres Complètes*

*Symes v. Cuvillier.*

*du Chancelier d'Aguesseau*, vol. xx., pp. 280, 323.

*Mr. Barnard* (Canadian Bar) and *Mr. Kenelm Digby*, for the respondents.—The principle contended for by the appellants formed no portion of the customary law introduced from France into Canada. The Ordinance of 1731, which established the principle as part of the law of France, was never in force in Canada. The principle contended for by the appellants is contrary to the principles of the free disposition of property. By the law of France a donation was not revoked by the subsequent birth of children unless the donation was "immensa" or "immodica." The Roman law, "Si unquam," was not introduced into France until the Ordinance of 1731. This ordinance never became the law of Canada. They referred to Cujacius, *Opera Postuma*, vol. ix., c. 31; Merlin Rep. "Donation," s. 7; Despiesses, *Traité des Donations*, pt. 1, ti. 14, s. 4; *La Coutume de Paris de Ferrière*, vol. iii., ti. 13; Ricard, *Traité des Donations*, pt. 3, c. 5, s. 4; Fourgole, *Traité de Ordinance*, 1731.

SIR MONTAGUE E. SMITH delivered the judgment of their Lordships (1):—

The action which gives occasion to this appeal was brought in the Superior Court of Lower Canada by the respondents, Marie Angelique Cuvillier, and her husband, Mr. Delisle, against the appellants, Marie Anne Claire Symes, and her husband, Le Marquis de Bassano, to recover two instalments of an annual income of 150*l.*, representing a capital sum of 2,500*l.*, in virtue of a donation contained in a notarial deed executed by La Marquise before her marriage. The defence was, that by the law of Lower Canada existing at the date of the deed (the 29th of May, 1866), the gift was revoked by the subsequent birth of children of the donor.

The Court of Queen's Bench reversed the judgment of a Judge of the Superior Court, dismissing the action, and, by a majority of three Judges to two, gave judgment for the respondents, against which the present appeal has been brought.

(1) Sir James W. Colville; Sir Montague E. Smith; and Sir Robert P. Collier.

By the deed in question, the appellant, Marie, gave to each of her two aunts, Mrs. Delisle (the respondent) and Miss Luce Cuvillier, an annuity of 150*l.* (currency), representing for each a capital of 2,500*l.* The gift to her aunt Luce was for her own use; that to Mrs. Delisle was in trust for her five daughters, "pour partie de leurs frais de toilette, et autres petits besoins personnels." The capital (2,500*l.*) was settled upon the daughters after their mother's death.

The following are the material facts. The appellant, Marie, who was the only child of Mr. Symes by his wife, a sister of the respondent, Mrs. Delisle, was born in 1845. Her mother died in 1861, and her father some time before 1866; the exact date does not appear. Upon the death of her father she became possessed of a large fortune—namely, about one million dollars. The greater part of this large property she inherited from her father, but a part (the sum spoken of is 50,000*l.*) from her mother. From the time of her mother's death in 1861, until she went to England in 1869, she lived with her aunt Luce Cuvillier, and during that time constantly associated with her cousins Delisle.

The gift now in question was made soon after the appellant came of age. She at the same time executed other deeds containing donations of an income of 600*l.* a year to each of her uncles, Austin and Maurice Cuvillier, representing a capital sum of 10,000*l.*, to each. In all these transactions the appellant consulted Sir George Cartier, who was her ordinary legal adviser.

It is suggested that one motive for these gifts was the wish expressed by the appellant's mother, that if her husband did not marry again, and the appellant succeeded to the whole of his large fortune, her (the mother's) property should go to her own relatives. It appears from the appellant's evidence that, though she had not herself heard her mother mention this wish, her aunts had told her, and no doubt correctly, that she had expressed it. There is no evidence whatever that the appellant was in any way imposed upon in making the gifts.

In August, 1872, the appellant Marie,

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whilst resident in England, married Le Marquis de Bassano, a French subject. After their marriage the appellants resided either in France or England. A child of this marriage was born in November, 1873, and a second in November, 1874.

In letters written by La Marquise, whilst resident in Europe, to her uncle, Maurice Cu villier, before and after her marriage, one being after the birth of her first child, she spoke of and recognised the donations. In a letter of the 9th of November, 1871, she says:—

"I also want to arrange so that the capital of the donations made by me at my coming of age to you, uncle Austin, aunt Luce and aunt Delisle, should be paid down and given to each of you respectively, so that if I marry my husband cannot interfere, or know anything about it."

The instalments of the income of the donation in question in this action were duly paid down to November, 1875.

In January, 1876, the appellants went to Canada, and La Marquise, as she states, and no doubt truthfully, then learned for the first time that, according to the law of Canada (as she was advised), her donations were revoked by the birth of her children. She thereupon resolved to repudiate them, and made no further payments.

It appears that on an investigation of accounts it was found that Mr. Maurice Cu villier, the guardian of the appellant Marie during her minority, and who had managed her property after she came of age, had mismanaged it, by which some losses were incurred.

The two uncles of the appellant and her aunt Luce have renounced the gifts made in their favour, thus leaving as alone in question the donation to Mrs. Delisle, in trust for her five daughters.

To ascertain the law of Canada on this subject at the time the donation was made, it has been necessary to enquire into the law as it existed prior to the coming into force of the Civil Code of Lower Canada, which contains the following article:—

"812. In gifts, the subsequent birth of children to the donor does not constitute

a resolute condition, unless it is so stipulated."

If the Code governed the question, this article would be decisive in favour of the respondents; but the Code did not come into force until the 1st of August, 1866, about two months after the date of the donation. It was, indeed, contended by the counsel for the respondents that its provisions on this subject became the law of the province upon the passing of the Act 29 Vict. c. 41, which sanctioned them; but their Lordships are clearly of opinion, for the reasons given by them during the argument, that this is not so, and that these provisions had not the force of law until the time fixed for the coming into operation of the Code.

The discussion at the bar, which took a wide range, and was ably conducted on both sides, was directed, in the first place, to the consideration of the law of France. It appears that the question of the revocation of gifts by the birth of children was for several centuries a fertile subject of discussion and controversy amongst French jurists. This controversy was complicated by the varying jurisprudence of different Parliaments. The law which is to be principally regarded in deciding this case is that of the Parliament of Paris; the Edict of Louis XIV. (1663), which created the "Conseil Supérieur," and established Courts of justice for Lower Canada, having directed that the "Coutumes de Paris" should be the general law of the Province.

The law of France was drawn from a rule in the Justinian Code, usually cited as the law "*Si unquam*," which is in the following terms:—

"*Si unquam libertis patronus filios non habens bona omnia vel partem aliquam facultatum fuerit donatione largitus et postea suscepit liberos, totum quidquid largitus fuerit revertatur in ejusdem donatoris arbitrio ac ditione mansurum.*"

The first question is to what extent, and under what modifications, this law was adopted and prevailed in France. It was plainly enlarged as to the persons to be affected by it, and was not confined to the case of patron and freedman, or of persons in an analogous relation; whilst, on the other hand, it is evident that, at

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least in some parts of France, it was limited and modified as to the things given, in the direction of excluding from the operation of the rule such donations as were not of large value relatively to the estate of the donor. What this proportion was, how it was to be measured, and under what circumstances generally the rule was excluded, has been the subject of much diversity of opinion amongst French lawyers, and the jurisprudence of the Parliaments has undoubtedly not been uniform.

It was argued by the learned counsel for the appellants that the text of the Roman law must be taken to have been the common law of France, where custom did not conflict with it. This may have been so in those parts of the south of France where the Roman law was held to govern as "*loi écrite*," but in other parts of the kingdom this would not seem to have been so, and, though in them the Roman law was resorted to by the Courts, and its principles were largely borrowed, yet these principles were not regarded as binding written law, and were capable of being, and in many cases were, modified by *les Coutumes* as expounded by the jurisprudence of the Parliaments.

Numerous French jurists have discussed with much ingenuity the question, What part of a man's estate might be given without being subject to the condition of revocation on the birth of children. Some early writers argued that the words "*partem aliquam*" should be construed to mean an *aliquot* part. Traces of this fanciful rendering are found in subsequent writers, becoming, however, very faint in later times. Indeed, this construction does not seem to have been persisted in, though it may have had some influence in moulding the law as it ultimately prevailed in the northern Parliaments of France before the Ordinance of Louis XV. in 1731.

It is to be collected from the passages cited from Cujas, an author of great authority, who wrote in the sixteenth century, that a donation was not revoked by the law of France unless it were "*immensa*" or "*immodica*." He puts the case of a man who, when childless, gave a sixth of his property to his brother,

and afterwards had a son, and then in answer to the proposition that by the law "*Si unquam*" the son could revoke the gift, says:—

"*Fallacia est in propositione; nec enim est absolute hoc verum donationem filium postea susceptum revocare; sed ita distinguendum est; aut immensa est donatio, aut non, et aut mera est donatio, aut non; immensam donationem liberi postea suscepti revocant; hic non fuit immensa, sed sextantem tantum donavit.*"—Cujacius, *Opera Postuma*, vol. 9, 316 (cited at the bar from an edition published in Naples, 1758).

Cujas, therefore, was of opinion that the gift of a sixth part of the donor's property would not be "*immensa*." It was argued that the authority of Cujas is weakened because he confused the law "*Si unquam*" with the *Lex Falcidia*. It is true that he refers to the *Lex Falcidia* in other passages, as bearing on his view of the law "*Si unquam*," but it is not at all likely that so great a lawyer would have been in any confusion of mind with regard to these laws.

In *Merlin Rep. vo. Donation*, section 7, the state of the old law is adverted to as follows:—

"*Avant la promulgation de l'ordonnance de 1731, on disputait beaucoup sur la question de savoir jusqu'où devait s'étendre une donation pour qu'elle fût sujette à être révoquée par survenance d'enfants. Les uns voulaient qu'elle fût au moins de la moitié des biens du donateur, les autres soutenaient qu'il suffisait qu'elle fût de quelque partie même audessous de la moitié. La jurisprudence n'était pas moins incertaine à cet égard.*"

Despiesses, whose work was first published in 1658, in treating of Donations (Part i., ti. 14, s. 4, sub-s. 11, edit. 1750), has a passage to the same effect:—

"*Nono. Cette révocation a lieu non seulement lorsqu'il s'agit d'une donation de tous les biens du donateur, ou de la plus grande partie, mais même d'une partie des biens beaucoup moindre que la moitié.*"—(Referring to Tiraqueau, Papon and other authorities.)

In the "*Arrêts de Papon*," a collection of arrêts published about 1559. Ti,

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Donations, liv. XI., article XIX., it is said :—

“ La disposition de la loi ‘ Si unquam ’ est aujourd’hui en France, à sçavoir, que donations faites de tous biens, ou de moitié, quart, ou tiers, en faveur de mariage ou autrement (si la coutume locale n’y repugne) sont revoquées de loi sans autre mystère,” by the birth of children.

He adds that it has been so determined by many “ Arrêts de Paris ” during the last twenty-five years. In a note by the editor, Chenu, a commentary on the law by Du Moulin is referred to, in which it is maintained that revocation would not take place unless the donation was “ de majore parte bonorum,” and an arrêt pronounced “ en robes rouges ” by the Parliament of Bordeaux, in 1602, is cited in support of this opinion.

The question was often raised, and the controversy regarding it is referred to in a book by Damours, intituled “ Conférence de l’Ordonnance concernant les donations avec le Droit Romain, &c.” (p. 324) ; whether “ donations particulières ” were revoked, or only those “ d’une quotité, comme d’un tiers, d’un quart, d’un sixième, dans l’universalité des biens.” It appears from Damours that the Parliament of Toulouse had decided that “ donations particulières ” were revoked, but that the Parliament of Paris had decided the contrary. An arrêt of the latter Parliament (1656), reported by Sæve, tom. 2, c. 18, is cited. From this report it appears that the gift was of a house and some land, and was not large in proportion to the property of the donor.

It would not be useful to refer further to arrêts upon the question of what should be the value of a gift in relation to the donor’s property to prevent the operation of the law of revocation. Salle, writing on the Ordinance of 1731, thus refers to the old arrêts on the subject :—

“ En considérant la jurisprudence des arrêts, on ne trouve point non plus stabilité, ni d’uniformité. Dans ceux qui ont prononcé la révocation des donations pour survenance d’enfans, il y a des donations qui étaient de la moitié, d’un tiers, et d’autres, d’une chose particulière.”

Whenever relative value has been discussed, it has not been shewn that a

donation of less than the sixth part, mentioned by Cujas, was ever regarded as “ immensa.”

The difficulty of defining, as a rule for all cases, the precise proportion the gift should bear to the whole property of the donor, shewn in the diversity of opinions and decisions upon the subject, no doubt led to the growth of the law which left the revocability of the gift to depend upon the circumstances of each case, and especially upon consideration of the question whether it would have been made if the donor, at the time of making it, had contemplated the birth of children.

The ground of decision just adverted to is found in an arrêt of the Parliament of Bordeaux, of the 2nd of June, 1570, cited by Despiesses, holding that a gift from a lady of 10,000 livres was revocable “ moyennant qu’y ait apparence que le donateur n’eût pas fait telle donation s’il eût pensé avoir des enfans ” (*ubi ante*).

The principle of this arrêt appears to have been sanctioned by jurists, and adopted by the Courts. Writers, who are acknowledged to be of high authority, seem to be agreed that it supplied the true rule on the subject.

De Ferrière, in his work on *La Coutume de Paris*, treating of revocation says :—

“ Cette question, à mon avis, ne se peut décider que sur les circonstances qui se tirent des biens du donateur, des choses données, et de leur valeur, et de la personne du donataire ; il faut examiner si le donateur n’auroit pas donnée, s’il avoit sçu avoir des enfans.”

Ricard, *Traité des Donations*, part 3, c. 5, s. 4, after discussing the diversity of opinion which had existed, lays down the same rule as De Ferrière, but with greater fulness :—

“ Je dis donc qu’il ne faut pas considérer si la donation est de la moitié, du tiers, du quart, ou de la sixième partie de tous les biens du donateur, ou même d’une chose singulière, mais que le point décisif consiste dans cette discussion qui s’emprunte des particularités des espèces qui sont à juger (cette matière étant entièrement dans les présomptions) de voir et examiner si vraisemblablement le donateur eût fait la donation, s’il eût eu

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des enfants au temps qu'elle a été passée ; si elle est considérable pour les biens qu'il possédait, et si regardant le donateur comme une personne prudente, on doit juger qu'il ait dû raisonnablement faire la donation dont il s'agit, en examinant dans le particulier si c'étoit un proche parent ou un domestique, dont la considération ait pu porter le donateur à exercer cette libéralité ; ou bien si la chose donnée est de petite considération, en égard à ses biens et à ses facultés, pour discerner s'il y a apparence qu'il eût fait cette donation supposé qu'il se fût vu chargé d'enfants, pour déterminer en ce cas qu'elle n'est pas révocable, ou bien que la loi y doit avoir lieu, si la présomption se trouve au contraire. Et de fait dans les arrêts qui ont été rapportés ci-dessus, et par lesquels les donations ont été déclarées révoquées par survenance d'enfants les unes étoient de la moitié, les autres du tiers, et les autres d'une chose particulière."

Fourgole, in his treatise on the Ordinance of 1731, in discussing the law as it stood before that Ordinance, considers that the soundest view of it was taken by Papon, Ricard, De Ferrière, and the other writers who maintained the principle of decision found in the passages last above cited ; and after giving the effect of the passage just cited from Ricard, he adds :—

"C'étoit à notre avis la meilleure règle qu'on pût suivre dans cette matière, qui n'étant pas fondée sur la disposition expresse de la loi, mais seulement sur l'équité appuyée sur son esprit, étoit purement conjecturale ; cependant elle avoit cet inconvénient, qu'elle rendoit la décision arbitraire, mais pour faire cesser cet inconvénient M. le Président de Lamoignon, dans ses arrêts au titre des donations, article 50, avoit cru que la donation d'une quote ou d'une chose particulière dont la valeur n'alloit pas au quart des biens du donateur au temps de la donation, ne devoit pas être révoquée."

It is to be remarked that Fourgole in this passage states distinctly that the rule in France was not founded on the express disposition of the law, but on an equity resting upon its spirit, and their Lordships consider this to be the correct view.

The arrêté (article 50) of President Lamoignon referred to by Fourgole, is in these terms :—

"Donation de chose singulière ou par quotité au-dessous de quart des biens qu'avait le donateur au jour de la donation, n'est point révoquée par survenance des enfants, mais si elle est du quart ou au-dessus, ou d'une chose singulière valant le quart des biens ou au-dessus, elle sera révoquée pour le tout."

Great reliance was placed by the learned counsel for the respondents on this arrêté, as a declaration of the law settled by the jurisprudence of the Parliament of Paris. The great authority of De Lamoignon, who was first President of that Parliament, was fully acknowledged, but it was denied that the arrêts were statements of the actual law ; they were said to be determinations of what the law should be. Assuming this to be so, there is some reason to suppose, from Lamoignon's preliminary enquiries and proceedings before publishing his arrêts, that he evolved the principle of Arrêté 50 from decisions of the Parliament of Paris. The jurisprudence having taken a direction which left the question to be determined in each case by the Court on the view of its circumstances, had produced uncertainty, and this inconvenience he wished to prevent by a definite rule.

Whatever may have been the diversity of opinions and decisions on the subject, the general effect of them points irresistibly to the conclusion that before the Ordinance of 1731, the Roman law "*Si unquam*" had not been introduced in all its fulness into France, at least into that part of it within the jurisdiction of the Parliament of Paris. It seems to their Lordships that, before that Ordinance, the law had, in effect, become this, that donations were not revoked by the birth of children, when the property given was not of large value in relation to the entire estate of the donor, and it could be presumed, from the circumstances of the particular case, that the gift would have been made if the donor had contemplated the birth of children. These questions in case of dispute would, necessarily, be decided by the Courts.

It was urged that a rule which re-

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quired the decision of a Court on those questions could not be the true one, as being inconsistent with the principle which implies the existence of a resolute condition in the gift itself; but this is really not so, for if the rule be as above supposed, the legal effect of it would be, that in a given state of facts the law did not attach the resolute condition to the gift, but when that state of facts did not exist it did attach it. The determination by the Courts of the question of fact in no way changes the legal nature of the condition (if there be one) as a resolute condition. When the facts are found in one way, the law implies that the gift was always unconditional, whilst, if found in the other, it implies that the condition was always inherent in the gift.

In 1731, the Ordinance of Louis XV., entitled "Ordonnance sur les donations," which adopted to its full extent the law "Si unquam," settled the law of France upon the subject. By article 39 it was enacted that all gifts made by persons who had not children at the time of the donation, "de quelque valeur que les dites donations puissent être, et à quelque titre qu'elles aient été faites, . . . demeureront révoquées de plein droit par la survenance d'un enfant légitime du donateur."

This Ordinance, which was framed after careful inquiry into the existing jurisprudence of France by Chancellor D'Aguesseau, contains a complete code on the subject of donations, and it was contended, on the part of the appellants, that it ought to be regarded as declaratory of the existing law. It appears that D'Aguesseau formulated certain questions, and sent them, with explanatory letters, to all the Parliaments. Extracts were read from these letters to shew that the Chancellor's object was to reform the discordant jurisprudence of the Courts, so that the law throughout France should be uniform. But the jurisprudence of each Parliament had taken root within its limits, forming the law administered there, and their Lordships do not gather from these letters that the Chancellor supposed that the contemplated Ordinance could be a mere declaration of existing law. He selected from the jurisprudence

of each Parliament what he considered to be good, and fit to be incorporated into the general law he proposed to frame.

It appears that the Chancellor contemplated the formation of a general code of law, and commenced with the subject of donations as being, in his view, one of the most simple, and the least difficult. (See his letter of the 3rd of May, 1730, to M. de Machault, Conseiller d'Etat, who was charged with making a *résumé* of the observations of the Parliaments and others upon the questions which had been put to them.) In this letter the Chancellor, after stating that all the Parliaments and "Conseils Supérieurs" had sent answers to his questions, says, "Il s'agit à présent de se servir de tant de bons matériaux pour en former une loi," which should be of a nature to stimulate further exertion in the same direction; and in the same letter he says the object was "à établir des règles certaines et uniformes sur ce qui fait le sujet d'une diversité de jurisprudence."

But, whatever may be the inference to be derived from these letters, the Ordinance contains within itself abundant evidence that it was not intended to be a mere declaration of existing law. It contains some provisions which are undoubtedly new. Thus article 45 enacts that the period of prescription shall be thirty years after the day of the birth of the last child of the donor. And article 39 itself is more stringent in its details than the law "Si unquam." But article 47 is decisive on this question. It repeals "toutes ordonnances, lois, coutumes, statuts, et usages" contrary to the provisions contained in the Ordinance, and provides that donations made before its publication were not to be attacked under pretext that they were not in conformity with its rules; "notre intention étant qu'elles soient exécutées ainsi qu'elles auroient pu et dû l'être auparavant, et que les contestations nées et à naître sur leur exécution soient décidées suivant les lois et la jurisprudence qui ont eu lieu jusqu'à présent dans nos cours à cet égard."

Considering, then, that this Ordinance enacts a new law on the point in question, it would not be of force in Canada unless it had been registered there. The appel-

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lants' counsel relied on the injunction of the Ordinance requiring it to be obeyed "dans tout notre royaume, terres et pays de notre obéissance;" but a royal Ordinance, published after the establishment of "Le Conseil Supérieur" in Canada by the Edict of 1663, did not take effect in that province, *proprio vigore*, until it was registered—*Hutchinson v. Gillespie* (2); *Les Sœurs Hospitalières de St. Joseph v. Middlemiss* (3).

This Ordinance not having been registered, it was incumbent upon the appellants to shew that the French law introduced into Canada in 1663, and which presumably continued to be the law there, became altered and modified in consequence of the jurisprudence of the province having adopted the rules contained in it. The learned counsel for the appellants was unable, after great research, to produce any evidence that the law had been thus changed or modified, and, in its absence, their Lordships think that such a change cannot be presumed.

The only authority which the learned counsel could invoke is that of the Commissioners charged with the preparation of the Canadian Civil Code, who in their report (vol 2, p. 333) state the law very nearly in the terms of the Ordinance of 1731, to which, indeed, they refer. This authority is no doubt entitled to respect; but the opinion of the Commissioners has not the weight of a judicial opinion, pronounced after discussion and argument; and it is to be observed that the Commissioners, having decided to introduce a new law (opposed to the law "*Si unquam*"), and not the old, whatever it was, into the Code, were the less concerned to ascertain with precision what the old law was. Whatever respect, therefore, may be due to the opinion of the Commissioners, their Lordships think, for the reasons already given, that it cannot of itself be regarded as sufficient evidence that the law of the Ordinance of 1731 had found its way into the jurisprudence of Canada.

Regarding, then, the law of Canada to be that which existed in the jurisprudence of the Parliament of Paris before the Or-

dinance, the question remains whether the gift in question was revocable upon the birth of children. In deciding it, two matters of fact require to be considered—one, the largeness of the gift, the other, whether the donor would have made it if she had contemplated children. On the first point, their Lordships have no difficulty in coming to the conclusion that the gift was not excessive in relation to the property of the donor. It was about the hundredth part of it. Wherever a gift of a part of a donor's property has been discussed and tested with reference to its amount, a proportion so small as this has never been regarded as excessive. It was contended that, in considering this question, the value of the gifts made to the other relations should be estimated; but, though the fact of these other gifts cannot be excluded, and for some purposes it might be very material to consider them, each gift, in the end, must be decided on its own merits. All these gifts, however, if taken together, amount only to about one tenth of the donor's wealth, a proportion less than any share which French writers have regarded as excessive. As already stated, one sixth is the lowest mentioned by them. Mr. Justice Ramsay, in his judgment, says that he had found no case, where the amount was in question, in which a donation of less than one sixth was set aside.

Then it is to be considered whether this donation would have been made if the donor had contemplated the birth of children. This question naturally opens an inquiry into the circumstances attending the gift. Ricard, in the passage cited above, alludes to those deemed to be material. The value is of course material; so also are the motives of the gift, and the relation of the donees to the donor. The circumstances in this case are, that for many years after her mother's death La Marquise lived with her aunt Luce, and in the society of her cousins. It was natural that she should have become attached to them, and, when on her father's death she succeeded to his large wealth, and to her mother's not inconsiderable property, that she should desire to make some present to them. Her gift is for personal objects, being described to be

(2) 4 Moore P.C. 378.

(3) Law Rep. 3 App. Cas. 118.

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"pour partie de leurs frais de toilette et autres petits besoins personnels," and therefore is of a kind which might well spring from her own wish to gratify her cousins. It is evident that she believed that her mother had expressed a desire that some part, at least, of her property should go to her own relatives. Respect for her mother's wishes and her own affection for her cousins supply ample motives for the gift in question. Considering then the value and nature of the gift, the relationship of the parties, and the motives which might naturally have actuated the donor, there seems to be good reason for presuming that if she had contemplated children she would still have made it. Her letters to her uncle, directing the arrangements to be made preparatory to her marriage, strongly support this presumption. But it is said she did not in fact contemplate having children when she made the gift. The true question, however, would seem to be, not whether she thought of having children, but whether it can be presumed that if she had thought of them she would still have made the gift. Even if this be not so, it is difficult to suppose that this lady, possessed of great attractions, and of great wealth, and whose letters display much intelligence and forethought, did not contemplate the probability of marriage. Questions of this kind can only be decided upon presumptions, and their Lordships agree with those which have been arrived at by the majority of the Judges in the Court below on this point.

Their Lordships will, for the reasons they have given, humbly advise Her Majesty to affirm the judgment appealed from, and with costs.

Solicitors—Burton, Yeates & Hart, for appellants;  
Freeman & Bothamley, for respondents.

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April 25. } v. LOUIS DUPUY (*respondent*).

*Canada—Dominion Parliament—Powers of—Insolvency—Appeal.*

*The British North American Act, 1867, by section 91 provides that the Parliament of Canada shall have exclusive authority to make laws in respect of bankruptcy and insolvency.*

*Section 92 provides that the Legislature of the provinces shall have exclusive authority to make laws in respect to "property" and "the administration of justice" in the province, including civil proceeding.*

*By section 128 of The Quebec Insolvency Act, decisions of a Judge in Chambers are to be considered judgments of the Superior Court, and may be appealed from in like manner as such judgments may be.*

*An Act of the Parliament of Canada, 40 Vict. c. 41, by section 28 provides "that the judgment of the Court under this section shall be final":—*

*Held, first, that this provision did not infringe the rights of the provincial Legislature; secondly, that the statute intended to abolish the right of appeal to the Queen; thirdly, that the statute in no way affected the royal prerogative to grant special leave to appeal.*

This was an appeal from a judgment of the Court of Queen's Bench for the province of Quebec, Canada.

The appellant's petition in the Superior Court alleged that a writ of attachment in insolvency had issued against the firm of M'Leod, M'Naughton & Léveillé, and that, under it, the respondent had seized effects which the firm had, by deed of sale, sold to the appellant, who subsequently leased them by deed to the firm; that the appellant had demanded delivery and possession of the effects, but the respondent refused to give up the same.

The respondent pleaded that the alleged deed of sale constituted not a sale, but an arrangement for securing to the appellant advances made and to be made to the insolvents; that the effects had never been removed into the actual possession of the appellant; that the

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alleged sale of effects was known only to the contracting parties; that the assignee had seized for the creditors and by virtue of a writ of attachment; that at the date of the deeds of sale and of lease, the vendors were insolvent, to the knowledge of the appellant; that the deeds were made in contemplation of bankruptcy and with a view to defraud the creditors of the bankrupts.

On the hearing, the Superior Court gave judgment for the appellant on his claim to be declared the rightful owner of the effects, as against the respondent.

The respondent appealed to the Court of Queen's Bench for the province of Quebec. The appeal was heard on the 22nd of March, 1878. The Court reversed the judgment of the Superior Court, and dismissed the petition with costs.

A motion was made to the Court of Queen's Bench by the appellant for leave to appeal from the above decision to Her Majesty in Council, but the rule was discharged with costs, on the ground that no appeal lay from the Court of Queen's Bench of the province.

The appellant then presented a petition to Her Majesty for special leave to appeal, which was granted, reserving to the respondent the right to raise the question of jurisdiction at the hearing.

*Mr. Kenelm Digby*, for the respondent, accordingly objected to the hearing of the appeal.—The right of appeal to Her Majesty is abolished by the provision contained in section 28 of the Act of the Parliament of Canada, 40 Vict. c. 41. The Parliament of Canada has express authority under the British North American Act, 1867, to legislate in all matters concerning bankruptcy and insolvency. The intention of the Act 40 Vict. c. 41 was that the judgment of the Court of Queen's Bench should be final. It is submitted that the royal prerogative will not be exercised to controvert the intention of the provisions of the statute. They referred to *Cuvillier v. Aylwin* (1), *In re Marois* (2), *The Queen*

*v. Stephens* (3), *Théberge v. Landry* (4), *Johnston v. The Minister and Trustees of St. Andrew's Church* (5).

*Mr. Davidson* (Canadian Bar).—The appellant is entitled, as a matter of right, to appeal under article 1178 of the Code of Civil Procedure of the province of Quebec. If the provisions of section 128 of the Insolvent Act of 1875, and the Amending Act of the dominion, can be interpreted as limiting the article, the Insolvent Act is *ultra vires* of the dominion Parliament. If the prerogative of the Crown to admit such appeals purports to be taken away by the Act of the dominion Parliament, such Act is *pro tanto, ultra vires*, and of no effect. The word "final" in the Canadian statute can only be construed to apply to the Court of Queen's Bench of Quebec.

SIR MONTAGUE E. SMITH delivered the judgment of their Lordships (6).

This appeal is from a judgment of the Court of Queen's Bench of the province of Quebec, reversing the judgment of a Judge of the Superior Court, which had been given in the appellant's favour, in certain proceedings in insolvency instituted under an Act of Parliament of the dominion of Canada, intituled "An Act respecting Insolvency" (38 Vict. c. 16).

These proceedings were commenced by a petition of *Mr. Cushing*, the appellant, to the Superior Court, praying that *Mr. Dupuy*, the official assignee of the estate of the insolvent firm of *M'Leod, M'Naughton & Léveillé*, might be ordered to deliver up certain property seized by him, as such assignee, under a writ of attachment, on the ground that it had been sold to the petitioner by the insolvents before their insolvency.

An application to the Court of Queen's Bench for leave to appeal to Her Majesty in Council was refused, on the ground that, under the Insolvency Act, its judgment was final. The appellant then presented a petition to Her Majesty for special leave to appeal, which Her

(3) 5 Moo. P.C. 296.

(4) 46 Law J. Rep. P.C. 1; Law Rep. 2 App. Cas. 102.

(5) Law Rep. 3 App. Cas. 159.

(6) Sir James W. Colville; Sir Barnes Peacock; Sir Montague E. Smith; and Sir Robert P. Collier.

(1) 2 Knapp, 72.

(2) 15 Moo. P.C. 189; 36 Law J. Rep. P.C. 82.

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Majesty was advised by their Lordships to grant, reserving to the respondent power to raise at the hearing the question of her jurisdiction to entertain the appeal.

That question, which has been fully argued at the bar, raises two points: first, whether the Court of Queen's Bench was right in holding that the appeal to Her Majesty in Council, given *de jure* by article 1178 of the Code of Civil Procedure, from final judgments rendered on appeal by that Court, be taken away by the Insolvency Act; and, secondly, if that be so, whether the power of the Crown, by virtue of its prerogative to admit the appeal, is affected by that Act.

The 128th section of the Insolvency Act enacts as follows:—

"In the province of Quebec all decisions by a Judge in Chambers in matters of insolvency shall be considered as judgments of the Superior Court; and any final order or judgment rendered by such Judge or Court may be inscribed for revision, or may be appealed from by the parties aggrieved, in the same cases and in the same manner as they might inscribe for revision or appeal from a final judgment of the Superior Court in ordinary cases under the laws in force when such decision shall be rendered."

By the 28th section of a subsequent Act of the Parliament of Canada, 40 Vict. c. 41, it is enacted that the 128th section of the former Act shall be amended by adding thereto the following words:—

"The judgment of the Court to which, under this section, the appeal can be made, shall be final."

This Court, in the province of Quebec, is the Court of Queen's Bench.

The whole question turns on these added words; and in considering their effect on the right of appeal to the Crown given *de jure* by the Code, two things are to be regarded: first, the power of the dominion Parliament to abrogate this right; and, secondly, if it had the power, whether it intended to exercise it.

The first of these questions depends upon the construction of the British North American Act, 1867, which confers and distributes legislative powers. By section 91 of that Act, exclusive legis-

lative authority in certain matters is conferred upon the Parliament of Canada, and by section 92 exclusive authority in certain others upon the Provincial Legislatures.

Section 91 is as follows:—

"It shall be lawful for the Queen, by and with the advice and consent of the Senate and House of Commons, to make laws for the peace, order and good government of Canada, in relation to all matters not coming within the classes of subjects by this Act assigned exclusively to the Legislatures of the provinces; and, for greater certainty, but not so as to restrict the generality of the foregoing terms of this section, it is hereby declared that (notwithstanding anything in this Act) the exclusive legislative authority of the Parliament of Canada extends to all matters coming within the classes of subjects next hereinafter enumerated; that is to say,—

"21. Bankruptcy and insolvency."

Section 92 enacts:—

"In each province the Legislature may exclusively make laws in relation to matters coming within the classes of subjects next hereinafter enumerated; that is to say,—

"13. Property and civil rights.

"14. The administration of justice in the province, including the constitution, maintenance and organisation of provincial Courts, both of civil and of criminal jurisdiction, and including procedure in civil matters in those Courts."

It was contended for the appellant that the provisions of the Insolvency Act interfered with property and civil rights, and was, therefore, *ultra vires*. This objection was very faintly urged, but it was strongly contended that the Parliament of Canada could not take away the right of appeal to the Queen from final judgments of the Court of Queen's Bench, which, it was said, was part of the procedure in civil matters exclusively assigned to the Legislature of the province.

The answer to these objections is obvious. It would be impossible to advance a step in the construction of a scheme for the administration of insolvent estates without interfering with and modifying some of the ordinary rights of property,

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and other civil rights, nor without providing some mode of special procedure for the vesting, realisation and distribution of the estate, and the settlement of the liabilities of the insolvent. Procedure must necessarily form an essential part of any law dealing with insolvency. It is, therefore, to be presumed—indeed it is a necessary implication—that the Imperial statute, in assigning to the dominion Parliament the subjects of bankruptcy and insolvency, intended to confer on it legislative power to interfere with property, civil rights and procedure within the provinces, so far as a general law relating to those subjects might affect them. Their Lordships therefore think that the Parliament of Canada would not infringe the exclusive powers given to the provincial Legislatures, by enacting that the judgment of the Court of Queen's Bench in matters of insolvency should be final, and not subject to the appeal as of right to Her Majesty in Council allowed by article 1178 of the Code of Civil Procedure. Nor, in their Lordships' opinion, would such an enactment infringe the Queen's prerogative, since it only provides that the appeal to Her Majesty given by the code framed under the authority of the provincial Legislature, as part of the civil procedure of the province, shall not be applicable to judgments in the new proceedings in insolvency which the dominion Act creates. Such a provision in no way trenches on the royal prerogative.

Then it was contended that if the Parliament of Canada had the power, it did not intend to abolish the right of appeal to the Crown. It was said that the word "final" would be satisfied by holding that it prohibited an appeal to the Supreme Court of Canada, established by the dominion Act of the 38th Vict. c. 11. Their Lordships think the effect of the word cannot be so confined. It is not reasonable to suppose that the Parliament of Canada intended to prohibit an appeal to the Supreme Court of Appeal recently established by its own legislation, and to allow the right of immediate appeal from the Court of Queen's Bench to the Queen to remain. Besides the word "final" has been before used in colonial legisla-

tion as an apt word to exclude in certain cases appeals as of right to Her Majesty. (See the Lower Canada Statute, 34 Geo. 3. c. 30.) Such an effect may, no doubt, be excluded by the context, but there is none in the enactment in question to limit the meaning of the word. For these reasons their Lordships think that the Judges below were right in holding that they had no power to grant leave to appeal.

The question of the power of the Queen to admit the appeal, as an act of grace, gives rise to different considerations. It is in their Lordships' view unnecessary to consider what powers may be possessed by the Parliament of Canada to interfere with the royal prerogative, since the 28th section of the Insolvency Act does not profess to touch it; and they think, upon the general principle that the rights of the Crown can only be taken away by express words, that the power of the Queen to allow this appeal is not affected by that enactment. In consequence, however, of the decision in *Ouillier v. Aylwin* (1), which has been relied on as an authority opposed to this view, it becomes necessary to review that case in connection with the subsequent decisions on the subject.

The question in *Ouillier v. Aylwin* (1) arose upon the Lower Canada Colonial Act, 34 Geo. 3. c. 6, which enacted that the judgment of the Court of Appeals should be final in all cases under the value of 500*l.*, and an application for special leave to appeal in a case under that value was refused by a Committee of the Privy Council. The remarks attributed to the Master of the Rolls in his judgment rejecting the petition are directed to one aspect only of the question—namely, the power of the Crown with the other branches of the Legislature to deprive the subject of one of his rights. No allusion was made to the principle that express words are necessary to take away the prerogative rights of the Crown, nor to the provision contained in the statute itself, that nothing therein contained should derogate from any right or prerogative of the Crown. This case, moreover, if not expressly overruled, has not been followed, and later decisions are opposed to it.

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In *re Louis Marois* (2), upon an application for leave to appeal from a judgment of the Court of Queen's Bench for Lower Canada, Lord Chelmsford, in giving the judgment of this Committee, after stating that in *Cuvillier v. Aylwin* (1) the very point was decided against the petitioner, said :—

"If the question is to be concluded by that decision, this petition must be at once dismissed, but upon turning to the report of the case, their Lordships are not satisfied that the subject received that full and deliberate consideration which the great importance of it demanded. The report of the judgment of the Master of the Rolls is contained in a few lines; and he does not appear to have directly adverted to the effect of the proviso contained in the 43rd section of the Act on the prerogative of the Crown."

Leave to appeal was granted in that case, subject to the risk of a petition being presented to dismiss the appeal as incompetent. Although their Lordships, in granting this leave, said that they desired to intimate no opinion whether the decision in *Cuvillier v. Aylwin* (1) could be sustained or not, it is obvious that, at the least, they regarded it as being open to review.

In *Johnstone v. The Minister and Trustees of St. Andrew's Church* (5), upon an application for special leave to appeal against a judgment of the Supreme Court of Canada, the effect of the 47th section of the Act, establishing that Court, which enacted that its judgments should be final and conclusive, saving any right which Her Majesty may be graciously pleased to exercise by virtue of her royal prerogative, came in question, and the Lord Chancellor, in giving the judgment of this Committee, said :—

"Their Lordships have no doubt whatever that assuming, as the petitioners do assume, that their power of appeal as a matter of right is not continued, still that Her Majesty's prerogative to allow an appeal, if so advised, is left entirely untouched and preserved by this section."

Although leave to appeal was in this instance refused, on the ground that the case was not a proper one for the exercise of the prerogative, the opinion cited above

is virtually opposed to the decision in *Cuvillier v. Aylwin* (1), where, it is to be remembered, the Act in question likewise contained a saving of the prerogative of the Crown.

Another case, lately before this Committee, requires consideration, *Théberge and another v. Landry* (4). It was an application for special leave to appeal against a judgment of the Superior Court of Quebec upon an election petition, by which the applicant had been unseated for corrupt practices. By the Quebec Controverted Elections Act, 1875, the decision of controverted elections, which formerly belonged to the Legislative Assembly itself, was conferred upon the Superior Court, and by section 90 of the Act it was enacted that the judgment of that Court sitting in review should not be susceptible of appeal. It was held by this Committee that there was no prerogative right in the Crown to review the judgment of the Superior Court upon an election petition, and the application was refused. This decision turned on the peculiar nature of the jurisdiction delegated to the Superior Court, and not merely on the prohibitory words of the statute. It was distinctly and carefully rested on the ground of the peculiarity of the subject-matter, which concerned not merely ordinary civil rights, but rights and privileges always regarded as pertaining to the Legislative Assembly, in complete independence of the Crown, so far as they properly existed; and consequently it was held that, in transferring the decision of these rights from the Assembly to the Superior Court, it could not have been intended that the determination in the last resort should belong to the Queen in Council. But, whilst coming to this decision, the Lord Chancellor, in giving the judgment of the Committee, affirmed the general principle as to the prerogative of the Crown :—

"Their Lordships wish to state distinctly that they do not desire to imply any doubt whatever as to the general principle, that the prerogative of the Crown cannot be taken away, except by express words; and they would be prepared to hold, as often has been held before, that in any case where the prero-

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gative of the Crown has existed, precise words must be shewn to take away that prerogative."

It was not suggested that an appeal would not have lain to the Queen in Council under the Insolvency Act of 1875; and it was not until two years afterwards that the Amending Act of 1877, which is said to have taken it away, was passed.

The learned counsel for the appellant drew attention to the Act of the Parliament of Canada, 31 Vict. c. 1, which enacts rules of interpretation to be applied to all future legislation, when not inconsistent with the intent of the Act or the context.

Sub-section 33 of section 7 of that Act is as follows:—

"No provision or enactment in any Act shall affect in any manner or way whatsoever the rights of Her Majesty, her heirs or successors, unless it is expressly stated that Her Majesty shall be bound thereby."

The Insolvent Acts are to be construed with reference to this provision, which is substantially an affirmation of the general principle of law already adverted to.

Applying that principle to the enactment in question, their Lordships are of opinion that, as it contains no words which purport to derogate from the prerogative of the Queen to allow, as an act of grace, appeals from the Court of Queen's Bench in matters of insolvency, her authority in that respect is unaffected by it.

The order for leave to appeal granted in the present case will consequently stand.

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Solicitors—Simpson, Hammond & Co., for appellant; Freeman & Bothamley, for respondent.

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1880.  
Feb. 14, 26.

{ OCTAVE BOURGOIN AND OTHERS  
(*appellants*) v. LA COMPAGNIE DU CHEMIN DE FER DE MONTRÉAL, OTTAWA ET OCCIDENTAL, AND THE ATTORNEY-GENERAL OF QUEBEC (*respondents*).

*Canada—Quebec—Railway Company—Award—Periodical Payment—Transfer of Railway—Validity of.*

An award under the Railway Act, 1868, directed a monthly payment to be made by a railway company to the lessee of land until a watercourse should be set free and a culvert constructed by the Company to protect the watercourse:—Held, that such award was bad, first on the ground that the arbitrator had no power either to order a periodical payment or the construction of a culvert; secondly, that as the payment was to cease on completion of the culvert, the award was bad for uncertainty.

The Railway Act, 1868, by sub-section 7, gives power to a railway company to "alienate, sell or dispose of its land."

A railway company, incorporated by an Act of the Province of Quebec, was by an Act of the Parliament of Canada declared to be a federal enterprise. By deed confirmed by an Act of the Province, the Company transferred "all their property, liabilities, rights, and powers" to the government of the province:—Held, first, that such deed and act were of no force or validity unless ratified by the Parliament of Canada; secondly, that the land of the Company could not be severed from other property of the Company comprised in the deed, and that in respect of the land the deed was inoperative.

These appeals arose out of four actions in the Court of Queen's Bench for Lower Canada, which were consolidated, for the purposes of the appeal.

The first action was brought in the Superior Court of Montreal, by La Compagnie du Chemin de Fer de Montréal, Ottawa et Occidental, against the appellants.

The second action was brought in the Superior Court of the same district by the appellants, against the Company.

The third action arose out of the second

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action, and was an appeal from the decision of the said Court, brought by Her Majesty's Attorney-General for Canada, intervening in the second action. The Attorney-General appealed from the decision of the Superior Court, but severed his appeal from the appeal of the Company.

The fourth action was an opposition *afin de distraire*, lodged by the Attorney-General against an execution under a writ of *fieri facias*, issued at the suit of the appellants, to recover costs.

The Company was originally incorporated as a provincial railway company by the 32 Vict. c. 55, of the Quebec Legislature, under the name of "La Compagnie du Chemin à Lisses de Colonisation du Nord de Montréal;" and afterwards, by virtue of the provisions of an Act, 36 Vict. c. 82, of the Parliament of the dominion of Canada, became a federal Company authorised to construct a railway uniting two provinces and passing from the province of Quebec into the province of Ontario. By virtue of the provisions of the 38 Vict. c. 68, the name of the Company was changed to its present name, "La Compagnie du Chemin de Fer de Montréal, Ottawa et Occidental."

The Company, being unable to complete its authorised works, executed a deed, dated the 16th of November, 1875, which was afterwards ratified by an Act of the Quebec Legislature, 39 Vict. c. 2. s. 8, whereby, after it had been declared that the Company was unable duly to execute the works, the works were abandoned by the Company, and the Company, for the considerations therein mentioned, conveyed all its rights in the works theretofore executed, and in the lands acquired or in course of acquisition for the said railroad, to the Quebec Government. The Quebec Government then took upon itself the construction of the railway.

On the 9th day of October, 1873, proceedings of expropriation were commenced by the Company for the expropriation of part of a certain stone quarry situated in the province of Quebec.

The freehold of the quarry was vested in the widow of one Smith, and had been leased to the appellants by a lease, for

five years, with a preferential right to the lessees, at the expiration of the term, to continue their lease for an indefinite period.

On the 14th of November, 1874, the lands in question became vested in the Company as proprietors thereof, subject to the said lease.

On the 22nd of February, 1875, proceedings of expropriation were commenced by the Company with the said appellants. Arbitrators were appointed, and a third arbitrator was nominated by the two others to determine the compensation to be paid by the Company for the lands in question and for all damages arising from the taking of the same, and for settling all questions arising between the Company and the appellants.

The proceedings in the arbitration were governed by the provisions of the Railway Act, 1868, of the dominion of Canada.

On the 28th day of July, 1876, the arbitrators made their award, and after reciting the submission, and that they had viewed the land in question and fully considered all the matters brought to their knowledge, they awarded for the piece of land described, and for all the damages resulting from the taking possession of the same, the sum of \$35,013, plus \$100 per month from that date, payable on the first day of each month, until the said Company should have set free the waterstream draining the quarries adjacent to the land expropriated, and should have constructed a culvert to protect the said waterstream, as the amount of compensation to be paid by the said Montreal Northern Colonisation Railway Company, now called the "Montreal, Ottawa and Western Railway Company," to the said "Bourgoin et Fils" and "Bourgoin and La Montague," for the said piece of land and for all the damages resulting from the possession of the same.

On the 15th of August, 1876, the Company brought their action No. 693, and prayed that the award might be declared null and void, and that the Company might be discharged from all obligations to pay the amount of the award, principal, interest or costs.

The appellant pleaded that the award

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in question had been rendered legally and in accordance with law.

The Superior Court of Montreal gave judgment, dismissing the action with costs.

The Company appealed from this judgment to the Court of Queen's Bench for Lower Canada, and on the 14th of December, 1878, that Court gave judgment in favour of the Company, on the grounds that the arbitrators had no right to impose on the Company the obligation of constructing any works; that the arbitrators had no authority to impose on the Company the payment of an annual sum, as damages, for an indefinite period, and until the execution of works of which neither the nature nor the extent was indicated; that the appellants being only tenants, the award could not order the payment to them of a rent which would be perpetual if the works mentioned could not be performed; that the award was not final in its nature and did not put an end to all chances of litigation between the parties.

On the 20th day of December, 1876, the appellants brought their action No. 1,213 against the Company, and prayed that the Company might be compelled to pay to the appellants the amount, with accrued interest, alleged to be due from the Company to the appellants under the said award, including the costs of the arbitration and costs.

The pleadings in this action raised substantially the same questions as to the validity of the award as were raised in the respondents' action.

Whilst this action was pending, the Attorney-General for the province of Quebec obtained leave to intervene in the proceedings, on the ground that by deed of the 16th of November, 1875, the Company had sold, granted and conveyed to Her Majesty all the right, title and interest of the Company in the property in respect of which the award had been made.

The Superior Court gave judgment in this action on the 18th day of April, 1878, and allowed the claim of the appellants and costs, and rejected the intervention of the Attorney-General.

The Company and the Attorney-General,

by appeals Nos. 144, 117, appealed from this judgment to the Court of Queen's Bench for Lower Canada, and on the 14th of December, 1878, that Court reversed the decision of the Superior Court in both appeals, annulled the award of the arbitrators and allowed the intervention of the Attorney-General. The reasons for this judgment as regards the invalidity of the award were the same as were given for their decisions in the former action.

On the 22nd of May, 1877, the appellants caused to be issued out of the Superior Court a writ of *fieri facias*, directed to the sheriff, commanding him to levy upon the goods and chattels and lands and tenements of the Company the amount of the costs awarded to the appellants. The sheriff filed a return to the writ, stating that he had seized certain immovables, but that an opposition *afin de distraire*, on the part of the Attorney-General, had been lodged in his hands, by reason whereof he was unable to proceed to a sale under the said writ.

The opposition *afin de distraire* referred to in the return alleged that by virtue of the purchase authorised by the Act of the Legislature of Quebec, 39 Vict. c. 2, the railway and all its accessories had become the property of Her Majesty.

The appellants filed a contestation of the opposition *afin de distraire*, alleging that, by the Act, 36 Vict. c. 82, of the Canadian Parliament, it was declared and enacted that the Company was a work for the general advantage of Canada, and should be held to be incorporated under the operation of the Railway Act of 1868, that it was *ultra vires* of the Company to enter into any of the agreements or arrangements mentioned in the Act of the Quebec Legislature, 39 Vict. c. 2, without authorisation from or subsequent confirmation by the Canadian Parliament, and that no such authorisation or confirmation had been obtained for the said conventions or arrangements, and that the provisions of the said Quebec Act, 39 Vict. c. 2, were null and void.

The Superior Court gave judgment on the 31st of May, 1878, and allowed the opposition of the Attorney-General, with costs against the appellants.

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The appellants thereupon appealed to the Court of Queen's Bench against this judgment, and on the 14th of December, 1878, the Court of Queen's Bench unanimously affirmed the judgment of the Superior Court, with costs.

From these several judgments of the Court of Queen's Bench this appeal was brought.

*Mr. Doutré* (Canadian Bar) and *Mr. Fullarton*, for the appellants.—The award was good. It would have operated unjustly if it had directed the payment of a lump sum by the Company in respect of the interruption of the watercourse. The amount may have been awarded on the supposition that the interruption would continue during the whole term. But the Company was bound by section 7 of the Railway Act, 1868, to restore the watercourse to its former condition. They referred to *The Great Western Railway Company v. Baby* (1), *Chemin de Fer Grand Central v. Rebois* (2).

*Mr. Benjamin* and *Mr. Jeune*, for the respondents.—The award was bad. The arbitrator had no power to direct a periodical payment or to order the Company to construct a culvert. The award was also bad for uncertainty, because the payment is to continue for an indefinite period. The arbitrator on a side issue directed the payment of a fixed sum by way of compensation for the loss of the use of the watercourse. They referred to *Ware v. The Regent's Canal Company* (3) *Skipworth v. Skipworth* (4); *Great Laxey Mining Company v. Clague* (5).

SIR JAMES W. COLVILLE delivered the judgment of their Lordships (6).

The only question which has been fully argued upon the four appeals consolidated in this record is whether the judgment of the Court of Queen's Bench rendered in the first suit, No. 693, was right in

annulling and setting aside the award of the 28th of July, 1876, upon either of the grounds stated in it. As to one of those grounds which proceeds upon the assumption that the lump sum of 35,013 dollars, awarded to the appellants, included the whole value of the land, and not merely the value of their interest as lessees, it is not necessary to say anything, because that objection has not been pressed.

The question, therefore, is reduced to this: Can the judgment be supported on the other ground taken? Their Lordships confined the argument, in the first instance, to that question, because they thought that if the award was found to be invalid on the face of it, that finding would go far to dispose of all or most of the questions which have been litigated between the parties. They will, therefore, for the present, confine their attention to the first of the suits and the final judgment therein, nor will they go into the facts further than is required in order to elucidate the single point to be now determined. The appellants are four persons holding a quarry, as lessees, under a Mrs. Smith. They are sometimes described as working together in two partnerships of two each, as "Bourgoin et Fils" and "Bourgoin et La Montagne," but for all practical purposes they may be treated as the four joint lessees of the quarry. The respondents, who were the plaintiffs in the suit, are a railway company, styled on the record "The Montreal, Ottawa and Western Railway Company." This Company was incorporated originally under another title—namely, "The Montreal Northern Colonisation Railway Company"—by an Act of the Legislature of the province of Quebec (32 Vict. c. 55), and was governed by that and a subsequent statute of the same Legislature (34 Vict. c. 23). It was, therefore, in its inception a provincial railway. In 1873, however, the Parliament of Canada, by Act 36 Vict. c. 82, declared this railway to be a federal enterprise, and by a subsequent statute (38 Vict. c. 68) changed the name of the Company to that which it bears on this record. Hence, when the proceedings which resulted in the award in question were commenced, the

(1) 12 Q.B. Up. Can. Rep. 106.

(2) *Sirey*, Recueil Journal, 1858, p. 831.

(3) 9 Exch. Rep. 395; 23 Law J. Rep. Exch. 145.

(4) 9 Beav. 135.

(5) 4 App. Cas. 115.

(6) Sir James W. Colville; Sir Barnes Peacock; Sir Montague E. Smith; and Sir Robert P. Collier.

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railway had become a federal railway, and the respondent Company was subject to and governed by the provisions of the Canadian statute known as the Railway Act, 1868.

It appears that, in one or other of the above two states of existence, this Company had proceeded in the usual way to ascertain the compensation payable to the lessor, Mrs. Smith, in respect of her freehold interest in the land to be expropriated. The appellants intervened, and sought to have the sum payable to them for compensation in respect of their interest as lessees ascertained by the same proceeding. The Company declined to accede to this, and, having settled the amount of compensation payable to Mrs. Smith, took possession of the quarry. The appellants upon that instituted certain proceedings, in order to compel the Company to ascertain the compensation due to them; those proceedings were ultimately successful, and thereupon the Company gave the notice of the 22nd of February, 1875, which was the foundation of the proceedings that resulted in the award. Their Lordships think it right here to observe that, in their opinion, there is nothing exceptional in that notice, nothing which supports the suggestion that its terms were varied by reason of the Company having previously, and perhaps wrongfully, taken possession of the quarry. It appears to them to be the usual notice contemplated by the Railway Act of 1868. The words which have been so much relied on as authorising the arbitrators to settle all questions between the parties have been taken *verbatim et literatim* from the 10th sub-section of the 9th section of that statute. After the service of the notice, arbitrators were appointed and the award in question was made; and the only two documents besides the notice which seem to be in any way material for the decision of the question now to be determined, are, the award itself and the claim of the appellants.

The material passage in the award, upon which the whole question turns, is that whereby the arbitrators, after stating that they had proceeded to assess the compensation to be paid by the Company

to the appellants for the piece of land described, and for all the damages resulting from the taking possession of the same, and had visited the said piece of land, and estimated with care and established the value of it, and the amount of the said damages, proceeded to award—“The sum of 35,013 dollars, plus 100 dollars per month from this date, payable on the first of each month, until the said Company shall have set free the watercourse serving to drain the quarries adjacent to the expropriated land, and constructed a culvert to protect the said watercourse, as being the amount of compensation to be paid by the said Montreal Northern Colonisation Railway Company, now called ‘The Montreal, Ottawa and Western Railway Company,’ to the said ‘Bourgoin et Fils’ and ‘Bourgoin and La Montague’ for the said piece of land, and for all the damages resulting from the possession of the same.”

The objection taken to the award is now confined to that portion of the passage just quoted which includes and follows the word “plus,” and relates to what the arbitrators seem to have considered as wholly or in part the compensation due to the appellants in respect of that portion of their claim which was comprehended in the words of its fourth head, and which claimed damages for the watercourse diverted by the Company, and for pumping and work to be done at the rate of 600 dollars per annum for eight years (which they treated as the probable duration of their lease), and amounting to a gross sum of 4,800 dollars. Their Lordships, after full consideration of this case, and of the learned arguments upon it, have come to the conclusion that, in respect of the passage in question, the award is bad upon the face of it. The case of the appellants was very ingeniously put, particularly by Mr. Fullarton. His argument was to this effect. He said that the arbitrators probably conceived that, if they gave the full sum claimed on the assumption that the interruption of the drainage would last for the whole duration of lease, fixed at eight years, they might be doing great injustice to the Company; that by virtue of the sixth sub-section of the 7th section of “The

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Railway Act, 1868," which is in these words:—

"To construct, maintain, and work the railway across, along or upon any stream of water, watercourse, canal, highway or railway which it intersects or touches; but the stream, watercourse, highway, canal or railway so intersected or touched shall be restored by the Company to its former state, or to such a state as not to impair its usefulness."

That the Company was, to the knowledge of the arbitrators, under a statutory obligation to restore the watercourse; that they assumed that the Company would perform that statutory obligation as soon as possible; and accordingly assessed the damages in the manner complained of in ease and for the supposed benefit of the Company; and further, that it was competent to them so to do.

The motives of the arbitrators, whatever they may have been, cannot validate their act if that were *ultra vires*. And the first observation which their Lordships have to make is that, as they read the statute, it was not competent to the arbitrators to impose the payment of a rent or periodical sum at all. The word "rent," no doubt, occurs in several of the sub-sections of section 9; but their Lordships think that the use of that word is always to be explained by a reference to the provisions contained in the sub-sections 3, 4 and 8, and that in every case, except those in which the parties expropriated fall within the description of "corporations or persons who cannot in common course of law sell or alienate the lands set out and ascertained," it is the duty of the arbitrators to fix as compensation, such a gross sum or sums as would be capable of being paid or tendered at once to the parties entitled to the same under the 27th sub-section, or into Court under the 34th sub-section, of the 9th section of the Act, in order to entitle the Company to possession under the 27th, or to a confirmation of title under the 34th and 35th sub-sections. It appears, moreover, to their Lordships, that even if a rent-charge could be given by way of compensation in circumstances like these to the expropriated parties, it has not been done in this case; that the

monthly sum awarded is not, in any sense of the term, a rent; that it is more in the nature of an assessment of damages payable *in futuro*, and does not in any point of view fall within the provisions of the Act.

A further objection to this part of the award is, that it makes the monthly payment contingent on the completion and erection of certain works, and thus introduces an element of uncertainty which would of itself be a fatal objection to the award. That it is open to the objection of uncertainty is shewn by the observations which have been quoted from the judgment of Mr. Justice Tessier, who decided in favour of the appellants. The learned Judge assumed that if the culvert is not constructed the annual sum will continue to be payable, not only to the appellants and their assigns, but to the reversioner, Mrs. Smith. The learned counsel for the appellants repudiated that construction; but the fact that it was put by the learned Judge upon the document goes to prove that there is some degree of uncertainty in the award. Again, the duration of the appellants' interest is uncertain, in that they held their lease with the power of renewing it so long as any stone remained to be worked. They might thus prolong the time during which the monthly sum would be payable, by omitting to work the stone, although no doubt the Company would have the power to put an end to their liability by doing the works prescribed.

Lastly, there seems to their Lordships to be a fatal objection to the award in the direction to the Company to restore the watercourse in a particular manner, and that by the construction of a culvert. They conceive that it was not within the functions of the arbitrators to prescribe how the Company was to relieve itself from the statutory obligation imposed upon it by the 6th sub-section of the 7th section, or to cast upon them the construction of a culvert which possibly might not be necessary.

It is right now to notice shortly certain authorities which have been invoked in the course of the arguments at the bar. The Chief Justice referred to four cases

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reported in the 12th Queen's Bench Reports, Upper Canada, as supporting his judgment, whereas the learned counsel for the appellants has treated them as authorities in his favour. If those decisions are opposed to the decision of the Court of Queen's Bench of Quebec in this case, that would only shew that there is a conflict of authority between the highest Courts of the two provinces, and that it is for their Lordships to decide between them. But their Lordships think that in truth there is no conflict at all, and that the cases in question do go to support the judgment of the Chief Justice in this case. It is to be observed that in all four cases the award was set aside. There is, therefore, no affirmative decision that a clause of this kind in an award is good. The only passage in the judgments in question which seems to their Lordships capable of being treated as in favour of the appellants is that at page 114 of the volume, in the case of *The Great Western Railway Company v. Baby* (1). Chief Justice Robinson there says:—

"The second and third objections seem also to have been satisfactorily answered. It is not the devisees who are moving against the award, on the ground that some things are directed in their favour which cannot be enforced against the Company; it is the Company who are complaining of the extravagance of the award. If they choose to object against the making and maintaining the tank spoken of, and to keeping open the Ferry street, and can successfully resist both or either of them, that would only shew that, so far as the amount of the award can have been influenced by assuming that those things were to be done, the devisees may have reason to complain that they have been deluded by promises of advantages which cannot be secured to them, and that the sum awarded as the value of their property should therefore have been larger, as they cannot reckon upon enjoying these benefits, which the arbitrators may have taken into account as considerations in their favour, tending to diminish the sum to be awarded."

He goes on to say:—

"Besides, these are not things which

the arbitrators have taken upon themselves to direct. They seem rather to have inserted them as being things understood between the parties, and which they had therefore taken into consideration in estimating the damages."

Then, at page 121, after saying that the award must be annulled upon another ground, he says:—

"But, to avoid occasion for question upon any future award, we would suggest that it should be clearly expressed, in the first place, that the sum awarded is given for the value of the lands and tenements or private privileges proposed to be purchased, or for the amount of damages which the claimant is entitled to receive in consequence of the intended railroad in and upon his lands (as the case may be), and that the award should either be silent in regard to any other matter on which the statute gives no authority to the arbitrators to give a direction, or that, if the estimate has been influenced by anything which the Company has engaged to do in order to lessen the inconvenience, it should be plainly expressed that the Company have undertaken to do it, and the particular thing should be so defined as to leave no uncertainty, and no room for future litigation as to what is to be done or allowed by the Company, and at what particular part in their work and in what manner it is to be done."

Therefore this judgment proceeded upon the fact that the Company had agreed and offered to do certain things, not that the arbitrators had imposed upon this Company the obligation to do them; and it points out that the award would be more correctly drawn if it had taken no notice at all of the works in question, or had stated that the Company had voluntarily undertaken to perform them. It gives no countenance to the doctrine that it is competent to arbitrators to impose such an obligation as of their own authority.

Again, the case cited from Sirey's Collection seems to be distinguishable from the present in the manner in which Chief Justice Dorion has pointed out. There a gross sum was awarded, but that gross sum was made reducible if the Company should do something which, as in that

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Canadian case, they had undertaken to do. The case is certainly distinguishable from the present, both because the compensation awarded was one sum payable at once, and because the Company had undertaken to do the works in question. Several other French decisions have been cited by Mr. Justice Tessier in support of his view of this award, but it appears to their Lordships impossible to reconcile the broad principle which he seems to deduce from them, namely, that objections of this kind can only be taken by the person expropriated, and not by the body that expropriates, with the Railway Act of 1868 and its provisions. Their Lordships think that this case ought to be decided upon Canadian legislation and upon Canadian jurisprudence. For that reason they do not notice the case from the Isle of Man, which was cited by Mr. Benjamin.

The only remaining question to be considered is one which was suggested in the course of the argument, namely, whether the objectionable part of the award is severable from that which awards to the appellant the sum of 35,013 dollars, so that the appellants may recover that, waiving their right to the rest of the compensation awarded. The point was never taken in the Canadian Courts, no offer of waiver was made there, and it may be questionable whether that point can now, for the first time, be raised here. Assuming, however, that it is open to the appellants, their Lordships are of opinion that the award is not severable in the manner suggested, the compensation improperly awarded being combined as it is with that which was properly awarded, and both declared to be "le montant de la compensation à être payée, pour le dit morceau de terre, et pour tous les dommages résultant de la possession de celui." And if they were severed a question might arise, as Mr. Benjamin has argued, whether the award would not be defective in that it failed to deal fully with one of the questions submitted to the arbitrators, namely, the amount of compensation due to the appellants under the fourth head of their claim.

This being their Lordships' view, they

think that the decision of the Court of Queen's Bench, which annulled and set aside the award as invalid on the face of it, is correct. They have come to that conclusion with considerable regret, because they feel that the appellants were entitled to a fair compensation for the expropriation of their quarry, and that now, after a vast amount of expensive litigation, they are as far as ever from receiving that compensation. Their Lordships do not say that the fault is wholly that of the Company or wholly that of the appellants; but the lamentable result remains, and they can only express their hope that in some way or another means will be found to give the appellants a fair compensation for the expropriation of their quarry, and for the damages which they have sustained thereby. Their Lordships, however, can but decide this question on its legal merits, and they feel that it is of great importance that arbitrators, with the large power given to them by the Railway Act, 1868, should be kept within the limits of their authority.

The conclusion to which their Lordships have come seems to dispose not only of the first appeal, but of most of the other questions raised on the record.

*Mr. Doutré* then intimated that, after consultation, the counsel for the appellants had come to the conclusion that even if the award were pronounced to be bad, that could affect only two of the appeals, and that they were desirous to argue the two other appeals. After some discussion their Lordships assented to the adoption of this course. Those appeals were accordingly argued.

*Mr. Doutré* and *Mr. Fullarton*, for the appellants.—The transfer of the property of the Company was *ultra vires* and can have no effect as against the appellants. They referred to *Gardner v. The London, Chatham and Dover Railway Company* (?).

*Mr. Benjamin* and *Mr. Jeune*, for the respondents.—The deed of transfer vested the land of the railway in the Government of the province by virtue of section 7 of the Railway Act, 1868. They referred to

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*The Great Western Railway Company v. The Birmingham and Oxford Canal Company* (8).

SIR J. W. COLVILLE (on Feb. 20) delivered the judgment of their Lordships:

The judgment of their Lordships, which was delivered on the 14th instant, and ruled that the award of the 28th of July, 1876, was bad on the face of it, disposed, except as to costs, of all the appeals and of all the questions between the appellants and the respondent Company.

It seemed, moreover, to leave to the appellants no substantial interest, other than costs, in the rest of the litigation. Their counsel, however, expressed a desire to argue the remaining appeals. Those appeals have accordingly been heard, and their Lordships have now to give judgment upon them. In order to see clearly what are the questions raised by them, it is necessary to refer shortly to some of the proceedings in the two actions numbered respectively in the Superior Court 693 and 1,213.

In the latter of these, which was brought by the appellants against the Company in December, 1874, in order to recover the amount due on the award, the respondent, the Attorney-General, intervened in the month of February, 1878. The cause was heard on the 18th of April, 1878, by Mr. Justice Mackay in the Superior Court against both the Company, the defendants and the Attorney-General as intervenor, and the judgment of that Court dismissed the intervention, and condemned the Company to pay to the appellants the amount due on the award. From this judgment the Company and the Attorney-General appealed separately. The Court of Queen's Bench reversed the judgment of the Superior Court against the Company, and the appeal of the appellants against so much of their judgment has already been disposed of. The appeal of the Attorney-General was also allowed, and the judgment of the Superior Court reversed as against him, but on the ground that the intervention, though legally competent, was unnecessary, without costs.

Again, the Superior Court, by its judgment in suit No. 693, wherein the Company sued to set aside the award, dismissed that suit with costs. The Company appealed against that judgment, and has succeeded both in the Court of Queen's Bench and here in getting it reversed. The date, however, of the judgment of the Superior Court was the 30th of April, 1877; the appeal against it was not lodged until the 5th of October following, and intermediately, i.e., on the 22nd of May in that year, the appellants issued a writ of execution for their costs, under which the sheriff seized certain lands, rolling stock and other property as belonging to the Company. On the 17th of January, 1878, the Attorney-General filed an "opposition afin de distraire," by which he claimed the whole of the property seized as the property of the Queen for the use of the province of Quebec. The appellants filed their contestation, and on the 31st of May, 1878, Mr. Justice Johnson pronounced the judgment of the Superior Court, which upheld the opposition; declared that all the lands seized were the property of Her Majesty for the use of the province of Quebec; that accordingly the seizure of the lands, immovables and accessories in question was null, void and illegal, and granted main levée thereof to the opposant, with costs against the contestants, the present appellants. That judgment was, on appeal, confirmed by the Court of Queen's Bench.

The determination of both these appeals mainly depends on the effect to be given to the transaction between the Company and the Government of Quebec which is embodied in the Notarial Act or Deed of the 16th of November, 1875, and in Act 39 Vict. c. 2 of the Legislature of Quebec. The parties to the deed are stated to be Her Majesty the Queen, represented by the Secretary of the province of Quebec, "acting as well for and on behalf of Her Majesty as for and on behalf of the province of Quebec, party hereto of the first part, hereinafter called the 'Government,' and the Montreal, Ottawa and Western Railway Company, described as a body politic and corporate, duly incorporated by statutes of the province of Quebec and of the dominion of Canada,

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&c., party hereto of the second part, hereinafter called 'the Company.' " The deed, after reciting the nature of the enterprise and the commencement of the work, and that the Company was then unable to proceed further with the construction of the railway by reason of certain bonds not being negotiated; and that the Government was willing to assume and complete the construction of the said railway upon such terms and conditions, and in such manner and within such time as the Government might deem expedient, and for that purpose to acquire from the said Company all its rights and assets, and to take upon itself the legitimate liabilities of the Company, and to repay the disbursements of the Company in manner and form and to the extent thereafter described; and that in consideration thereof the Company had agreed to transfer and convey such rights and assets to the Government also upon the conditions thereafter expressed,—proceeds to state, in different clauses, the covenants and agreements into which the parties had entered before the notary. The material clauses are the 1st, 2nd, 4th, 7th, 8th and 9th.

By the 1st the Company granted, sold and conveyed to the Government all its right, title and interest in the uncompleted railway, with all lands acquired or bonded for right of way, stations and other purposes, all bridges, piers, abutments, forms and other things expressly mentioned, stating their intention to be "to divest the Company of all the property of the said corporation, and of all and every part and parcel of the said incomplete railway, and of everything appertaining thereto or necessary or useful or acquired for the construction thereof, now in the possession of the Company, or to which it is entitled as fully and completely to all intents and purposes as the same are now held by the Company, and to vest the same in the Government."

By the 2nd the Company transferred to the Government all its right, title and interest in and to the balance of the subscription of stock in the said Company by the Corporation of the city of Montreal, and the several subscriptions of stock in the said Company of various other corpo-

rations, together with all the rights, claims and demands of the said Company upon the said city of Montreal for the said balance of subscriptions, and upon the said other corporations for their said subscriptions of stock and bonus.

By the 4th, the Government, in consideration of the above sales and transfers, agreed to pay to certain trustees for the Company, upon the confirmation of the deed, the sum of \$57,149.95 currency, being the amount of the then paid-up capital of the Company; and also to pay immediately all such disbursements and liabilities as had been adjusted between the Government and the Company; and it was further agreed that if any further legitimate liabilities should be established to the satisfaction of the Government to be justly and legally due by the Company, the same should also be assumed and paid by the Government.

By the 7th, it was provided that, until it should please the Government to receive possession of the property and premises thereby transferred, the Company should hold and administer the same for and on behalf of the Government, and in such manner as should be directed by it, and should, in all respects, carry out the instructions of the Government in respect of the said railway; and in respect of every matter and thing connected therewith, until the transfer and delivery thereof to the Government and its complete assumption and possession thereof had been perfected; and that, so soon as such transfer and delivery should have been so perfected, the Company should dissolve itself, and should cease to act in any way, the Government thereupon indicating some person to accept transfers of the shares of the Company held by the individual shareholders therein.

By the 8th, the Company undertook to assist the Government, in any manner that might be required, in procuring the passage of any Act by the dominion or the provincial Parliament that the Government might deem expedient to have passed in the interest of the enterprise, and to furnish aid and assistance in other matters.

And, by the 9th, it was provided that

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the deed should have no force or effect after the termination of the next session of the Legislature of the province of Quebec, unless confirmed by the said Legislature at the next session thereof, nor until such confirmation; but that it should be submitted for such confirmation to the next session of the said Legislature, and, immediately upon such confirmation, should have full force and effect, according to its terms.

The confirmation required by this last clause of the deed was given by the Act, 39 Vict. c. 2, which was passed by the Legislature of Quebec on the 24th of December, 1875. That statute not only, by its 8th section, confirmed in the fullest manner the transfer and assignment of the 2nd of November, 1875, it did a great deal more: it combined the enterprise of the Montreal, Ottawa and Western Railway Company with that of another company called the North Shore Railway Company, which had made a similar transfer in favour of the Government of Quebec; it gave to the railway to be completed the new name of "The Quebec, Montreal, Ottawa and Occidental Railway;" it declared that railway to be a public work belonging to the province of Quebec, held to and for the public uses of the province, and provided for the mode of its construction; it vested the construction and management of that railway in certain commissioners with ample and defined powers; by section 11 it made the provisions of the Quebec Railway Act, 1869, so far as they were applicable to the undertaking and not inconsistent with the provisions of that Act, applicable to the said railway, and empowered the commissioners, in cases where proceedings have been commenced by the Montreal, Ottawa and Western Railway for the expropriation and acquisition of lands for the purposes of that railway and had not been completed, to continue such proceedings under the provisions of the Quebec Railway Act, but with the consent of the proprietor of such lands, or to discontinue such proceedings, and commence proceedings *de novo* under the said Quebec Railway Act; and, by section 24, it reunited lands which had been granted

to the Montreal, Ottawa and Western Railway Company, to the public lands of the province. Sections 43, 44, 45 and 46 have even a more direct bearing upon the questions raised by the two appeals now under consideration. Section 43, "in order to avoid all doubts," enacts that the Quebec, Montreal and Occidental Railway is thereby invested with all the rights, powers, immunities, franchises, privileges or assets granted by the Legislature of the province of Quebec to the Montreal Northern Colonisation Railway Company, and, so far as that Legislature could do, with all the rights, powers, immunities, franchises, privileges and assets granted by the Parliament of the dominion of Canada to the Montreal, Ottawa and Western Railway Company. Section 44 takes away the power of the last-mentioned company to appoint directors, and abolishes the directorate contemplated by the former statutes. Section 45 transfers to the commissioners the rights of the individual shareholders in the Montreal, Ottawa and Western Railway Company, providing that their paid-up stock shall be refunded to them; and section 46 authorises the commissioners, with the consent of the Lieutenant-Governor in Council, to apply to the Parliament of Canada for any legislation which may be deemed necessary for the purposes of the Act.

The combined effect, therefore, of the deed and of this statute, if the transaction was valid, was to transfer a federal railway, with all its appurtenances, and all the property, liabilities, rights and powers of the existing company, to the Quebec Government, and through it to a company with a new title and a different organisation; to dissolve the old federal company, and to substitute for it one which was to be governed by, and subject to, provincial legislation.

It is contended on the part of the appellants that this transaction was invalid, and altogether inoperative to affect the obligations of the Company. They insist that, by the general law and by reason of the special legislation which governed it, the Company was incompetent thus to dissolve itself, to abandon its

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undertaking, and to transfer that, and its own property, liabilities, powers and rights to another body, without the sanction of an Act of a competent Legislature; and, further, that the Legislature of Quebec was incompetent to give such sanction. This contention appears to their Lordships to be well founded.

That such a transfer, except under the authority of an Act of Parliament, would in this country be held to be *ultra vires* of a railway company, appears from the judgment of Lord Cairns in *Gardner v. The London, Chatham and Dover Railway Company* (7). That it is equally repugnant to the law of the province of Quebec, so far as that is to be gathered from the Civil Code, is shewn by the 369th Article of that Code. But the strongest ground in favour of the appellants' contention is to be found in the special legislation touching this Railway Company. The history of the Company and of its conversion from a provincial into a federal railway company has been stated in the judgment already delivered. By section 1 of the Canadian statute, 36 Vict. c. 82, which effected that conversion, the railway was declared to be a work for the general advantage of Canada. By the 5th section of the same statute it was enacted that the continuations of the line thereby authorised should be deemed to be railways or a railway to be constructed under the authority of a special Act passed by the Parliament of Canada, and that the Company should be deemed to be a company incorporated for the construction and working of such railways and railway, according to the true intent and meaning of the Railway Act, 1868 (the dominion statute). By the 6th section, parts 1st and 2nd of the Railway Act, 1868 (which comprise all the general and material provisions of that statute) were made applicable to the whole line of the railway, whether within or beyond the enterprise originally contemplated; and it was enacted that no part of the Quebec Railway Act, 1869, should apply to the said railway, or any part thereof, or to the said company. And by the 7th section it was provided that the two Acts

of the Quebec Legislature (32 Vict. c. 35, and 34 Vict. c. 28), by which the Company had been incorporated and previously governed, should be read and construed and have effect as if the changes of expression therein mentioned (the effect of which would be to make them speak as Acts of the Canadian Parliament) had been made in them; that, so read and construed and taking effect, they should be deemed to be special Acts according to the true intent and meaning of the Railway Act, 1868, and that no part of the Quebec Railway Act, 1869, should be incorporated with the said special Acts, or either of them, or form part thereof, or be construed therewith as forming one Act.

These provisions, taken in connection with, and read by the light of, those of the Imperial Statute, the British North-American Act, 1867, which are contained in section 91, and sub-section 10c of section 92, establish, to their Lordships' satisfaction, that the transaction between the Company and the Government of Quebec could not be validated to all intents and purposes by an Act of the provincial Legislature, but that an Act of the Parliament of Canada was essential in order to give it full force and effect. This proposition was, finally, hardly disputed by the learned counsel for the respondent, but they relied upon the 8th clause of the deed and the 46th section of the Quebec Act, as shewing that recourse to the Parliament of Canada for its sanction was within the contemplation of the parties, and contended that, before that sanction was obtained, the transaction was valid for some purposes, and gave certain inchoate rights which were capable of being asserted. In support of their argument they cited *The Great Western Railway Company v. The Birmingham and Oxford Junction Railway* (8), and what was said by Lord Cottenham in that case. It is to be observed, however, that Lord Cottenham, when ruling that the contract, which could not be fully carried out without Parliamentary sanction, was not, in the absence of such sanction, to be treated as a nullity, and that some of its provisions might nevertheless be binding, was dealing with the

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rights of the parties to the contract *inter se*. Here the public and the creditors of the Company, in which category the appellants fell since the questions raised by these two appeals must be considered as if the award were valid, were no parties to the transaction, and could not be affected by it until it was fully validated by an Act of the Parliament of Canada, to obtain which no attempt seems ever to have been made. In their Lordships' opinion, therefore, the transaction, considered as a whole, was of no force or validity as against the rights of the appellants when the decisions of the Canadian Courts upon the intervention and the opposition were passed.

This being their Lordships' conclusion, they proceed to consider how it affects the two appeals, and first that which relates to the Attorney-General's intervention. Now, if it be admitted, for the sake of argument, though their Lordships must not be taken to affirm the proposition, that the Attorney-General had such an inchoate right under the transaction as would have justified his intervention, had there been reason to suppose that the expiring Company would fail to make a substantial defence to the action No. 1,213, it is to be observed that that was not the actual state of things. The action itself was not commenced until December, 1876, and the defences of the Company were filed on the 30th of that month. The transaction between the Company and the Quebec Government was completed, so far as it was ever completed, in December, 1875. It is, therefore, obvious that, in the first instance, the Quebec Government intended to defend the action, in the name of the Company, under the provisions of the 7th clause of the deed. All objections which the Company could take to the award, and in particular the one which has proved fatal to it, were taken in their defences. The intervention of the Attorney-General was not until 1878, and the reasons filed by him on the 17th of September in that year are sufficient to shew that the object of the intervention was to raise objections to the validity of the award, founded upon the attempted transfer of 1875, which

could not have been taken in the name of the Company. Those reasons, the contestation of them, and the other pleadings, shew that the new issues raised between the parties were the validity of the transfer as against the appellants, the right of the Commissioners under the Quebec Act to continue or discontinue the proceedings in the expropriation, the abandonment of the railway, and its transformation into a new railway, to be constructed under different conditions. This intervention was only necessary for the trial of these fresh and additional issues; and was, as the Court of Queen's Bench itself has found, wholly unnecessary for the trial of the original issues. Upon the trial of the action in the Supreme Court, Mr. Justice Mackay expressly found "*que les faits allégués dans la dite intervention, savoir le transport des droits et actions de la dite Déléfenderesse au Gouvernement de la dite province de Québec, n'a pas été prouvé avoir lieu légalement*"—a finding in accordance with the conclusion to which their Lordships have come touching the transaction of 1875, and one which would justify the dismissal of the intervention, even if the learned Judge had taken a view different from that which he did take of the validity of the award. The Attorney-General had failed to shew any grounds for inflicting upon the appellants the costs of unnecessary and expensive proceedings. In these circumstances, their Lordships are of opinion that the Court of Queen's Bench ought to have dismissed the appeal of the Attorney-General, and to have affirmed the judgment of the Superior Court, in so far as it related to the intervention, with costs.

Their Lordships have now to consider the appeal which arises out of the "*opposition afin de distraire*." That opposition to the execution could not succeed as to such of the lands seized as had belonged to the Company, unless it were established that the property in those lands had been changed by the attempted transfer of 1875. Their Lordships are of opinion that there was no such change of property. The transaction, viewed as a whole, and as one single contract,

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could not, for the reasons above stated, operate as a valid transfer of the lands of the Company to the Government of Quebec. Their Lordships feel bound to dissent from two propositions, on one of which the judgment of Mr. Justice Johnson, and on the other of which the judgment of Chief Justice Dorion, in part proceeds. Mr. Justice Johnson ruled that the contestants ought, if they questioned the validity of the transaction of 1875, to have concluded that it should be set aside or declared null, and that, by reason of their failure to do so, they must be taken to be bound by it. Chief Justice Dorion expressed an opinion that it was only at the instance of the Government of Canada (the Dominion), or of an individual who could shew that he had a special interest distinct from that of the public, that the transfer could be set aside. These reasons are somewhat contradictory, and their Lordships cannot think that either affords a good ground for the judgment impeached. If the transaction, not having the sanction of the Parliament of Canada, were *ultra vires* of the Company and the Government and Legislature of Quebec, it was of no legal force or validity against the appellants, and might be so treated by them whether it were formally set aside or not. The other ground on which the judgment proceeds, and which has been chiefly insisted upon here, is more plausible. It is that the Company had power, under the second sub-section of the 7th section of the Railway Act, 1868, to "alienate, sell and dispose of its lands;" that the transaction of 1875, even if invalid as a whole, is severable, and that the Company must be taken to have sold by it their land to the Government of Quebec in the exercise of that power. Their Lordships cannot accede to this argument. It appears to them that the contract is not severable in the manner suggested. It is a contract whereby, for the same consideration, everything which it purported to pass was intended to pass. Suppose what was suggested by Chief Justice Dorion were really to happen, that the Dominion Government were to take steps to set aside the transaction, could the Govern-

ment of Quebec be heard to say, "True, the transaction will not stand as a transfer of the railway, or of the rights, powers, liabilities and duties of the Company, but it may enure as a sale of the lands acquired in order to the construction of the railway, or part of them, in the exercise of the power in question"? Would not the answer be, "There is no trace of such a contract, or of an intention to make it"?

By the evidence taken on this proceeding, it appeared that a considerable part of the lands, rolling stock and other property seized, had never belonged to the Company, but had been purchased by the Commissioners since 1875.

In respect of that property the Attorney-General was entitled to succeed in his opposition. He should, however, have been held to have failed as to the lands, &c., which had belonged to the Company. And in their Lordships' opinion, the proper order to be made was one which would have upheld the seizure as to this latter part of the property in question, whilst it granted main levée as to the rest, leaving each party to pay their own costs. Since the execution must now altogether fail by reason of the award having been set aside, it will not be necessary to draw up a formal order to the above effect.

The order which their Lordships will humbly recommend Her Majesty to make on the four consolidated appeals will be to the following effect, namely, to allow the appeals numbered respectively 117 and 141, and to dismiss the other appeals; to affirm the judgment of the Court of Queen's Bench in the suit No. 693, wherein the Company was plaintiff, and the appellants and others were defendants; to reverse so much of the judgment of the Court of Queen's Bench in the action 1213, wherein the appellants were plaintiffs, and the Company were defendants, and the Attorney-General intervenor, as relates to the intervention of the Attorney-General, and in lieu thereof to affirm so much of the judgment of the Superior Court in the same suit as relates to such intervention, with the costs of the appeal to the Queen's Bench; but to affirm in

*Bourgoin v. La Compagnie du Chemin de Fer de Montréal.*

all other respects the last-mentioned judgment of the Court of Queen's Bench; to reverse the judgment of the Court of Queen's Bench in the matter of the opposition "à fin de distraire," and to declare that in lieu thereof, an order should have been made reversing the judgment of the Superior Court in such matter, and declaring that the opposition should have been allowed as to so much only of the property seized as had been purchased by the Commissioners since 1875, and disallowed as to the rest, and that each party should bear their own costs in both Courts, but that by reason of the failure of the execution in consequence of the setting aside of the award, it had become unnecessary to draw up any such order.

Their Lordships are of opinion that, under the circumstances, no order should be made as to the costs of these consolidated appeals.

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Solicitors—Simpson, Hammond, Richards & Simpson, for appellants; Bischoff, Bompas & Bischoff, for respondents.

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1880. } GOLDRING v. LA BANQUE  
Feb. 7. } D'HOUELAGA.

*Lower Canada—Queen's Bench—Right of Appeal—Civil Code of Procedure—Arts. 1,178, 822.*

*The Court of Queen's Bench of Lower Canada has no power to grant leave to appeal from a judgment of that Court in respect of the issue of a writ of *capias ad respondendum*, unless such proceeding is distinct from and not incident to a suit.*

This was a petition to rescind an order of the Court of Queen's Bench of Lower Canada, granting leave to the appellant to appeal from a judgment of that Court to Her Majesty in Council.

The petition stated that a suit was instituted in the Superior Court of the province by the respondent against the appellant, and that the respondent obtained an order of the Court that a writ of *capias ad respondendum* should issue

against the appellant under Articles 1,798 and 807 of the Civil Code; that the appellant appealed to the Court of Queen's Bench to rescind this order, but that the Court of Queen's Bench, on the 24th of June, 1879, affirmed the order of the Superior Court, and granted leave to the appellant to appeal from this judgment to Her Majesty in her Privy Council.

*Mr. K. Digby*, for the respondent.—The Court of Queen's Bench had no power to grant leave to appeal. The judgment of the Court of Queen's Bench was not a final judgment within the meaning of Article 1,178 of the Code of Civil Procedure. He referred to the Code of Civil Procedure, Articles 796, 820, 1,115.

*Mr. Doutie* (Canadian bar) *contra*, referred to *Blanchence v. Sharpley* (1), *Gagy v. Ferguson* (2), *The Canadian Bank v. Brown* (3), *Sauvagean v. Gauthier* (4).

SIR JAMES W. COLVILLE delivered the judgment of their Lordships (5):—

Their Lordships, upon the best consideration they can give to this case, are of opinion that it is not one in which it was competent to the Court of Queen's Bench to grant the leave to appeal. The 1,178th Article of the Code of Procedure is precise that an appeal lies to Her Majesty in Her Privy Council from final judgments rendered in appeal or error by the Court of Queen's Bench. Then it gives the cases in which the appeal is allowed. There is no express provision for the allowance of such an appeal from an interlocutory order. The argument in support of the order of the Court has proceeded chiefly upon section 822 of the same Code, which is one of those which relate to procedure in respect of writs of *capias*. That Article appears to their Lordships clearly to imply that the decisions to which it relates are no more than interlocutory orders.

(1) 3 L. Can. Ju. 292.

(2) 12 L. Can. Rep. 254.

(3) 19 L. Can. Ju. 110.

(4) Law Rep. 5 P.O. 494.

(5) Sir James W. Colville; Sir Barnes Peacock; Sir Montague E. Smith and Sir Robert P. Collier.

*Goldring v. La Banque d'Hochelaga.*

If the decision of the Superior Court on the matter therein referred to had been regarded as a final judgment, there would have been no necessity to give by this Article special leave to appeal, because it would have been appealable under Article 1,115, as pointed out by Mr. Digby. The real object of the Article is to make special provision for an appeal to the Court of Queen's Bench from an interlocutory order of a particular kind. The Code gives by Article 1,116 an appeal against certain other interlocutory judgments, but in these cases Article 1,119 provides that there must be a preliminary motion before the Appellate Court, in order that that Court may decide whether the particular judgment falls properly within the terms of Article 1,116. But an appeal from an interlocutory judgment under Article 822 was not to be subject to that provision, and hence the necessity for that Article. The judgment of the Court of Queen's Bench upon a judgment of the Superior Court in this matter cannot be regarded as a final judgment within the meaning of Article 1,178, unless it can be shewn that proceedings under the provisions of Article 796, and the subsequent Articles of the Code which relate to the particular subject of *capias ad respondendum*, are so severed from the general suit that they are to be treated as something separate in their nature, and not as incident

to the suit. Their Lordships are of opinion that the Code has not expressed that they are to be so treated, and that from their nature they are merely incidental to the suit and in the nature of process therein. They are, therefore, of opinion that the judgment of the Queen's Bench, which is the subject of this appeal, is not a final judgment within the meaning of the Code, and consequently that the appeal has not been regularly brought before Her Majesty in Council. It has been suggested that their Lordships may now recommend Her Majesty to grant, as they have unquestionably power to do, special leave to appeal; but they are of opinion that there are not before them sufficient grounds for making such a recommendation. They therefore think that the prayer of this petition must be granted; but, considering that the point is novel, and that the Court of Queen's Bench has seen fit to allow this appeal, they do not think it is a case for costs. Their Lordships will therefore humbly advise Her Majesty accordingly.

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Solicitors—Harris & Goodwin, for appellant;  
Ashurst, Morris & Co., for respondent.

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THE YEAR 1880:

Cases in Bankruptcy,  
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BARRISTERS-AT-LAW;

AND IN  
Her Majesty's Court of Appeal,

REPORTED BY  
ARTHUR CLEMENT EDDIS, Esq., AND H. LACY FRASER, Esq.,  
BARRISTERS-AT LAW.

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MICHAELMAS, 1879, to MICHAELMAS, 1880.

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# REPORTS OF CASES

## IN

### The London Court of Bankruptcy

DECIDED BY THE CHIEF JUDGE,

AND ON APPEAL THEREFROM TO

THE COURT OF APPEAL AND HOUSE OF LORDS.

MICHAELMAS 1879 TO MICHAELMAS 1880.

43 Victoria.

#### [IN THE COURT OF APPEAL.]

<p>JAMES, L.J.          THESIGER, L.J.          1879.          Nov. 12.</p>	}	<p><i>Ex parte</i> SMITH; <i>ex parte</i>          LANGLEY;  <i>in re</i> BISHOP.</p>
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*Contempt—Notice of Injunction by Telegram—Breach of Injunction—Communication of Notice.*

Notice by telegram of an order of the Court may, under certain circumstances, be sufficient to render a person disobeying the order liable to committal for contempt; but as the liberty of the subject is to be affected, those who allege that notice in fact has been received must prove it beyond doubt.

A sheriff's officer receiving notice by telegram of bankruptcy proceedings, and a fortiori of an order founded upon them, if he has any doubt as to its authenticity, should communicate either with the Bankruptcy Court or the sheriff's agent in London, to find whether the telegram was correct.

The auctioneer should under similar circumstances communicate with the person under whose instructions he sells.

The doctrine of notice through the medium of an agent cannot apply to the case of a sheriff's officer who has no actual notice of an order, and consequently a sheriff's

officer cannot be committed for contempt when he has not received notice of the order of the Court, although such notice has been received and the order disobeyed by his subordinate.

A London solicitor who obtains an order of Court restraining a sale should not telegraph direct to the auctioneer or sheriff's officer, but should telegraph to a solicitor at the place as agent for him, and instruct him to go and give notice of the order. The person affected by the order would, if such a course were adopted, have the benefit of the personal responsibility of an officer of the Court.

This was an appeal against an order of the Chief Judge in Bankruptcy, for the committal of Smith, a sheriff's officer, and Langley, an auctioneer, for continuing the sale under an execution, of the goods of Bishop, after receipt of a telegram stating that the Court of Bankruptcy had granted an injunction restraining the sale.

Bishop was a licensed victualler, and kept the "Walmer Castle Hotel," at Deal.

An action had been brought against him in which judgment for 89*l.* had been recovered, and execution issued, under

*Ex parte Smith; in re Bishop, App.*

which the Sheriff of Kent had seized the furniture in the hotel.

A sale of these goods had been advertised originally for the 5th, but had been postponed till eleven o'clock on the 6th of August, to give the debtor a further opportunity to pay out the execution as he had promised to do, and he had in fact proceeded to London with the avowed intention of procuring the money there for that purpose.

Smith, the sheriff's officer, residing at Ramsgate, had been commissioned to carry out the sale, but he had been compelled to go early on the 6th of August on business to Canterbury, and had accordingly instructed Emmerson, his deputy, to carry out the sale.

The sale was postponed till twelve by the auctioneer. Shortly after eleven o'clock a telegram was received at the hotel from a Mr. Matthews, the manager of the hotel, who had gone to Ramsgate to find Smith, as follows:—"Smith gone to Canterbury; you had better stop sale on your own account, as I know it is all right."

Statements were also made in the auction room by the debtor's son and others that the debtor was coming down to Deal by the twelve o'clock train to pay the amount of the debt, and ultimately the sale was again postponed till one o'clock.

Shortly after the commencement of the sale a telegram was received addressed to the sheriff's officer, as follows:—

"From Learoyd & Co., solicitors, London, to the sheriff's officer in possession, Walmer Castle Hotel, Deal. Take notice that the London Court of Bankruptcy has made an order restraining you from selling or taking any further proceedings in the action against Bishop."

Emmerson shewed this telegram to Langley, and the sale was again adjourned till the afternoon in order to receive further instructions from Smith, and the following telegram was sent—"Langley just received telegram to stop sale. Shall we proceed?—people are waiting your reply." Smith telegraphed in reply, "If telegram from London does not state that Bishop has filed a petition, or that the debt has been paid, the sale is to proceed." The sale was therefore continued,

and the effects were disposed of at a very low price.

It appeared that Bishop, either failing to procure money to pay out the execution, or in pursuance of an arranged plan, filed a liquidation petition at 11.55 A.M. of the morning of the sale, and obtained the appointment of a receiver, and on the same day upon the joint application of the receiver and debtor, an order was made restraining until the 8th of September the further proceedings in the action against Bishop, and restraining the Sheriff of Kent, his officers and servants, from taking any further proceedings in the said action, and the debtor's solicitors, Learoyd & Co., sent the above telegram.

The trustee in liquidation, who was afterwards appointed, moved to commit the auctioneer and sheriff's officer for contempt.

Langley filed an affidavit, in which he swore that he believed the telegram was a mere ruse of the debtor or some of his friends to procure a postponement of the sale; that he did not believe that any bankruptcy or liquidation proceedings had been contemplated, still less really taken; or that any order had been made by the Court of Bankruptcy; that if he had had any idea of the real fact of the order having been made, he would at once have withdrawn, and that he had acted throughout *bona fide*.

He was not cross-examined on his affidavit.

Three persons also swore that statements had been made to Langley and Emmerson in the auction room, that the debtor was coming down by the twelve o'clock train for the purpose of paying out the execution.

The motion was heard by the Chief Judge on the 10th of November, 1879, when he made the order appealed from.

*Mr. Ohitty and Mr. Oreed, for Smith.*—Smith was away and had no notice of the injunction, and consequently cannot be committed.

*In the case of*

*Lord Wellesley v. Lord Mornington,*  
11 Beav. 181,

the Court held the defendant's bailiff liable to be committed for contempt for

*Ex parte Smith; in re Bishop, App.*

knowingly disobeying an order restraining his master from committing waste; but the only authority for the present application is

*Rantzen v. Rothschild*, 14 W.R. 96, where Vice-Chancellor Stuart made principals pay the costs of a motion for committal for the disobedience of their servant to an injunction of the Court.

That was in fact tantamount to a committal, for it appears from

*Witt v. Corcoran*, 45 Law J. Rep. Chanc. 603; Law Rep. 2 Ch. D. 69,

that the Court has no jurisdiction to order payment of costs when no contempt has been committed.

The only ground on which Smith could be committed is on the maxim of "Respondet superior," but that should not be applied where the liberty of the subject is in question.

The sheriff is placed in a dilemma. If he delays the sale he is liable to the execution creditor, and the order of the Court should be conveyed to him in so clear and definite a manner as to leave it absolutely impossible for him to doubt. Service of the order itself is the proper way to shew the order of the Court.

*Mr. Ambrose and Mr. Bigham*, for Langley.—Langley has sworn, and his evidence is uncontradicted, that he did not believe that any order had been made by the Court, or that any proceedings in bankruptcy had been taken. He thought the telegram a ruse, and there were circumstances which justified that suspicion, and he therefore comes within the principle laid down by Lord Eldon in

*Kimpton v. Eve*, 2 Ves. & B. 349, where he said, that if the person sought to be committed "would go the length of saying he did not believe the order was made, he would not act upon the practice of ordering him to pay the costs of the motion."

If Langley had had any notice of contemplated bankruptcy, he would no doubt have rendered himself liable to committal for contempt, but the circumstances of each case must be taken into consideration.

In the case of

*Re Bryant*, Law Rep. 4 Ch. D. 98,

a specific notice in writing was given to the auctioneer by the solicitors of the debtor that a liquidation petition had been filed. But they only accelerated the sale by four days, and received a notice by telegram before the sale commenced that an injunction had been granted, and that an order would be served as soon as possible, and even then they were only ordered to pay the costs of the motion. That was a flagrant case of contempt.

*Mr. Winslow and Mr. Finlay Knight*.—This is a very common proceeding. To enable an auctioneer to gain his commission, and a sheriff's officer his fees, a sale is hurried on with the result that goods, as in the present case, only fetch a third of their value.

Even if an order is bad, or such as can be set aside, it must be obeyed until it is set aside—

*Russell v. The East Anglian Railway Company*, 3 Mac. & G. 104; 20 Law J. Rep. Chanc. 257.

If notice by telegram may be disobeyed because it may be a trick and false, the same remark will apply to notice by letter; but it is decided that notice by letter will do—

*Kerr on Injunctions*, 638.

A committal will be ordered where neither the writ nor the minutes of the order have been served, nor any personal notice given.

Here the notice was clear in its terms—there is no need for the telegram to state any liquidation proceedings—it mentions the Bankruptcy Court.

It is not necessary that the order for the injunction should be served—

*Vansandau v. Rose*, 2 J. & W. 264; it is sufficient if notice be given.

Why did they not telegraph to the Court of Bankruptcy, or back to Messrs. Learoyd, to ask whether the telegram was authentic?

Then as to the sheriff's officer. He should have done his duty and not left it to a deputy, and if he chooses to do so he must be responsible for the deputy's acts.

In the case of

*Russell v. The East Anglian Railway Company* (*ubi supra*), the application was for the committal of the sheriff for the act of the under-sheriff,

*Ex parte Smith ; in re Bishop, App.*

and the Lord Chancellor said that the safety of the public might require such a proceeding.

*Stockdale v. Hansard*, 11 Ad. & E. 297; 3 P. & D. 330; 9 Law J. Rep. Q.B. 218,

was cited in that case, and Vice-Chancellor Stuart acted on that in

*Rantzen v. Rothschild (ubi supra)*.

JAMES, L.J.—I think the order of the Chief Judge cannot be sustained. With regard to the sheriff's officer, he does not seem to have been a party to the alleged contempt at all, because I do not think the mere fact of the telegram is sufficient to bring home to him any participation in the supposed contempt. You start with this, that really the persons who are putting the order into force created the difficulty. It appears that up to the day before the 6th of August, there had been no notion of filing a liquidation petition. Then on the 6th there was a telegram from a Mr. Matthews, who is evidently connected with the debtor, of which no explanation has been given, saying, "Stop the sale, it is all right," which could only mean this, that the matter had been settled, that is, that the debtor had found means to satisfy the execution.

Then it is sworn by three persons that statements were also made to the auctioneer and to the sheriff's man in possession that the debtor was coming down by the twelve o'clock train for the purpose of paying out the execution. Therefore these were circumstances which would naturally induce a man to be suspicious, and the sheriff's man, who was there, actually says he did not believe that any order for an injunction had been made, while, with regard to Mr. Smith, he does not seem to me to have had anything brought to his knowledge sufficient to shew that he was personally guilty of any contempt of Court. Because I do not see where you are to stop. If Smith who was not there, who was not served with any order, to whom the telegram was not even addressed (it was addressed to the sheriff's officer in possession), if he, being away from the place at the time, not being away for the purpose of absenting himself so as not to receive any

notice, but being away *bona fide* for the purpose of discharging his own other functions, if he is to be committed for something which was done by the auctioneer and the person in actual possession, I do not see why we should stop short of committing the under-sheriff or even the high sheriff himself. I do not think the cases justify us in going to that extent, and that is what the case amounts to so far as the sheriff's officer is concerned.

Then, with regard to the auctioneer, something more may perhaps be said against him. It appears to me that he might have taken some steps (though I do not know what steps I should have taken if I had been in his position) to ascertain whether an order had really been made by the plaintiff. Perhaps some auctioneers would have done so. But he has taken upon himself to swear positively (and he has not been cross-examined) that which Lord Eldon in *Kimpton v. Eve* held to be sufficient. He swears that he did not believe that there had been any proceedings in the Bankruptcy Court whatever, or that any such order had been made. A person in such a position, and a sheriff's officer, is placed in great difficulty upon receiving a telegram of this kind, knowing nothing at all of the person who may have gone to the post-office and sent it, a telegram which might just as well have been sent by the debtor or by Matthews, or any one else on behalf of the debtor in the name of Messrs. Learoyd. I am very far from saying that notice of an order cannot be given by telegram. It is very difficult to commit a person for contempt when he says, as the auctioneer does here, under circumstances which certainly give colour to his assertion, that he did not believe that any order had been made by the Court, and that he had no suspicion whatever that he was disobeying any order of the Court in continuing the sale.

I think we cannot in the face of his affidavit charge him with contempt. And I must say that the difficulty was brought about by the person who obtained the order. If it was intended to be enforced, why was it not obtained the day before?

*Ex parte Smith; in re Bishop, App.*

Why was not the petition filed the day before? Why did not they get the order in time to send down a solicitor or a solicitor's clerk with the order or with some sufficient evidence that it had been made? They could have done this if they had been minded to take reasonable steps for the purpose, and I believe it was their conduct which led to the whole of this difficulty by leaving the thing to the last moment, and then merely trusting to a telegram to give notice of an order which was in fact only pronounced after the sale had been begun, which sale would probably have been over had it not been for the delays which had been granted, and of which the person who sent the telegram could have had no knowledge.

THESIGER, L.J.—I agree that the appeal must be allowed. But in holding that the order of the Chief Judge cannot be supported, I in no way dissent from the proposition laid down by him in this case, and also in *In re Bryant*, that, under certain circumstances, a telegram may constitute a sufficient communication and a sufficient notice of an order of the Court, so as to make a person who disregards the notice and acts in contravention of the order, liable for the consequences of a contempt of Court. I think it would be most disastrous in the interests of public justice that the means of communication afforded by the telegraph should not be utilised for the purpose, especially in cases like the present. But the question in each case, and depending upon the particular circumstances of the case, must be, was there or was there not such a notice given to the person who is charged with contempt of Court that you can infer from the facts that he had notice in fact of the order which had been made? And in dealing with a matter of this kind, bearing in mind that the liberty of the subject is to be affected, I think that those who assert that there was such a notice ought to prove it beyond reasonable doubt.

Has that burden been discharged in the present case? First, take the case of the sheriff's officer. He had, in accordance with his instructions and his duty, ordered a sale to take place through the

medium of his officers, and in the middle of the day upon which the sale was fixed to take place he received this telegram from his deputy Emmerson—"Langley" (that is the auctioneer) just received telegram to stop sale. Shall we proceed? People are waiting your reply." Now it must be borne in mind that the man who received that telegram was aware that there had been attempts on the part of the debtor to delay the sale, with the view, if possible, of paying out the execution, and it is clear that there had been discussions and communications which might lead the sheriff's officer, Smith, *bona fide* to believe that the execution might, upon that day, be paid out. There was nothing, so far as I can judge, from this telegram to shew that the sheriff's officer receiving it did not *bona fide* believe, not necessarily that the telegram which had been received by Emmerson was a ruse of the debtor, but that at all events it was a communication from the debtor for the purpose of obtaining further delay. There is nothing to shew that the telegram which he received in any way communicated to the mind of the sheriff's officer that there had been proceedings in bankruptcy and a restraining order founded upon those proceedings.

But, more than that, I think that when the telegram sent by Mr. Smith is looked at, it is obvious that he believed that there were no bankruptcy proceedings, or had no thought that there were any. Still less did he think that there was any order founded upon such proceedings. There was nothing to shew him that any petition had been filed by the debtor himself, and consequently there was nothing to shew him that there had been any restraining order. So far it appears that the sheriff's officer was only acting in accordance with the duty which he owed to the execution creditor. Therefore no case is made against him. But in saying that, I wish to guard myself from being supposed in any way to dissent from what Mr. Winslow has said with regard to the duties of a sheriff's officer. I think if Mr. Smith had had notice by telegram that there were proceedings in bankruptcy, still more, if he had had notice that a restraining order

*Ex parte Smith; in re Bishop, App.*

had been made, and that a telegram had purported to come from Messrs. Learoyd, solicitors, of London, it would have been his duty to communicate, either with the Bankruptcy Court or with the sheriff's agents in London, for the purpose of finding out whether the telegram was correct. But Smith had no notice of any proceedings; he had no notice of any order, and it appears to me that he was acting in accordance with his duty in sending the telegram which he did send.

That being the case with regard to the sheriff's officer, what is the position of the auctioneer? Now here again it must be borne in mind that there had been, not only before the 6th of August, but upon that day, communications made to the auctioneer for the purpose of obtaining a delay in the carrying out of the sale. A telegram had been received between ten and eleven o'clock, the contents of which had been communicated to him, and which I certainly think he was justified in holding to be a ruse for the purpose of obtaining delay. Then the next proceeding was the telegram, which undoubtedly purported to come from some solicitors in London, and stated that a restraining order had been obtained. What was the duty of the auctioneer under such circumstances? I do not think that it was his duty to communicate either with the Bankruptcy Court or with the sheriff's agents in London; but I do think it was his duty (and he fulfilled that duty) to communicate with the person under whose instructions he was selling. He did so, and he received instructions from him to proceed with the sale, unless a petition in bankruptcy had been filed by the defendant. It is said, "Well, but looking at the nature of the telegram, he must have been aware that a petition had been filed;" and I agree that the circumstances are somewhat suspicious as regards the auctioneer. But, on the other hand, he has positively sworn that, coupling what had happened before with the telegram, he *bona fide* believed that he was not bound to act upon the telegram which he had received; that there had been no proceedings which would

justify him in stopping the sale. He has not been cross-examined, and nothing has been proved to shew that his affidavit is not true. Under such circumstances, the observations of Lord Eldon in *Kimpton v. Eve* seem to me pertinent and material; and I may add, that in a case like the present the benefit of a doubt ought to be given to the person charged with contempt.

There is another observation which I ought to have made with reference to the sheriff's officer. It is said that, assuming that he had not actual notice of these proceedings and the order, at all events he had notice through his agent. We are aware that under certain circumstances, at all events before Lord Campbell's Act, editors and proprietors of newspapers were responsible criminally, and subject to be imprisoned, in respect to acts which they had not personally committed, but which had been perpetrated by their agents. But that liability was founded upon the idea that the proprietor who employs an agent for the purpose of publishing a newspaper, and from day to day putting certain articles into it, gives a general authority to that agent to publish that which upon any particular day is published in the paper. But the present case appears to me to stand upon a very different footing. What happens is, not that the sheriff's officer is doing something which is within the general scope of his duty, but that, while he is performing what he is authorised by his principal to perform, something occurs which places him and his principal in a perfectly different position, and one which necessitates entirely new instructions.

Under these circumstances it appears to me that it would be the height of injustice to say that, although there is no communication made to the principal, although there is nothing to shew him that these particular circumstances have arisen in the course of the sale, he is to be held responsible as if he had personally committed a contempt of Court.

For these reasons it appears to me that the order of the Chief Judge cannot be supported, and that the appeal must be allowed.

*Ex parte Smith; in re Bishop, App.*

JAMES, L.J.—I wish to add this, that when parties who obtain an injunction wish to communicate it by telegram, there is a very obvious mode by which they can prevent difficulties like this. If the solicitor, instead of telegraphing to the sheriff's officer, were to telegraph to some solicitor as his agent at the place, and instruct him to go and give notice of the order, then the person affected would have the responsibility of an officer of the Court for what he was doing.

The sheriff's officer was allowed his costs in both Courts. The auctioneer ordered to pay his own costs.

Solicitors—Church, Sons & Clarke, agents for Mercer, Ramsgate, for sheriff's officer; Bower & Cotton, agents for Mowll, Dover, for auctioneer; Learoyd, Learoyd & Peace, for trustee.

[IN THE COURT OF APPEAL.]

JAMES, L.J.  
BAGGALLAY, L.J.  
THESIGER, L.J. } *In re WATKINS; ex parte*  
1879. } EVANS.  
Nov. 20.

*Judgment Creditor—Elegit not issued—Receiver—Equitable Execution—Bankrupt Debtor—Secured Creditor—27 & 28 Vict. c. 112. s. 13—The Bankruptcy Act, 1869, s. 16 (sub-sec. 5).*

Where a judgment debtor's interest in land is of an equitable nature, and a writ of *elegit*, if issued at the instance of the judgment creditor, will result in nothing, the latter need not issue the writ before taking proceedings to obtain equitable execution.

In such a case an order appointing a receiver of the rents and profits of the land at the suit of the judgment creditor, in an action by him to enforce payment of the judgment debt, is a delivery in equitable execution by virtue of a lawful authority within 27 & 28 Vict. c. 112, although the receiver may not perfect his appointment

until afterwards; (1) and the judgment creditor is thereby constituted a "secured creditor" within sub-section 5 of section 16 of the Bankruptcy Act, 1869.

This was an appeal from the decision of Bacon, C.J. (reported 48 Law J. Rep. Bankr. 97; Law Rep. 11 Ch. D. 691).

A judgment creditor, who subsequently became the transferee of a legal mortgage executed by the debtor, commenced an action in the Chancery Division before the Master of the Rolls to enforce payment of the judgment and mortgage debts; and on the 7th of August, 1879, obtained the appointment of an interim receiver until the 14th of August. On that day the receiver was confirmed in his appointment, and the same day the debtor filed a liquidation petition. No writ of *elegit* had been sued out by the judgment creditor.

An order was made in the liquidation by the County Court Judge (whose decision was affirmed by the Chief Judge) that the appointment of the interim receiver was a delivery in execution of the debtor's land by virtue of "a lawful authority" other than a writ of *elegit*, within 27 & 28 Vict. c. 112. s. 13, although no writ of *elegit* had been issued; and that the judgment creditor was a secured creditor within section 16 (sub-section 5) of the Bankruptcy Act, 1869, and could tack his judgment debt to the mortgage debt.

The trustee in liquidation appealed against the order of the Chief Judge.

*Mr. Romer*, for the appellant.

*Mr. Winslow* and *Mr. F. O. J. Millar*, for the respondent.

The arguments were the same as in the Court below, and the same authorities were referred to, and also

*Edwards v. Edwards*, 45 Law J. Rep. Chanc. 391; Law Rep. 2 Ch. D. 291.

JAMES, L.J., said—I am of opinion that the judgment of the Chief Judge must be affirmed. The only real point is whether the order appointing a receiver was an equitable execution within the meaning of the

(1) See *Edwards v. Edwards*, 45 Law J. Rep. Chanc. 391; Law Rep. 2 Ch. Div. 291.

*In re Watkins; ex parte Evans, App.*

Act 27 & 28 Vict. c. 112. Now beyond all question it was held in *Hutton v. Haywood* (1) and *The Anglo-Italian Bank v. Davies* (2) that the order appointing a receiver is a delivery in equitable execution by lawful authority within that Act. The moment the judgment creditor made out his case to the satisfaction of the Court, the Court made an order giving him the right of possession to the land through the receiver, and it was as much an equitable delivery in execution as the sheriff going through the process of inquisition and making a return to the writ. That was clearly decided in those two cases. Here we find there was in existence an interim order for the appointment of a receiver covering the day on which the liquidation commenced, and that that order was afterwards made absolute. It appears to me that that order was made with the intention of giving the creditor equitable execution. What the Court in fact acceded to was the application of the judgment creditor, *qua* judgment creditor, and therefore he actually obtained an order giving him possession and equitable execution just as much as if he had got an extent. I am of opinion, therefore, that the decision of the Chief Judge is quite right.

BAGGALLAY, L.J., said—I am of the same opinion. I think the question is precluded by the two cases that have been referred to by my Lord, and the principle is well summed up by Cotton, L.J., in *The Anglo-Italian Bank v. Davies* (2), where he says, "My opinion is that the appointment of a receiver is now delivery in execution by lawful authority within the meaning of the Act, 27 & 28 Vict. c. 112, and that there is nothing whatever to prevent the Court from interposing on interlocutory motion."

THESIGER, L.J., said—This case is almost entirely covered by authority. It has been held that the appointment of a receiver in respect of equitable interests in land is equivalent to execution under a writ of *elegit* in respect of legal interests,

(1) 43 Law J. Rep. Chanc. 372; Law Rep. 9 Chanc. 229.

(2) 47 Law J. Rep. Chanc. 833; Law Rep. 9 Ch. D. 275.

and is an actual delivery in execution within the meaning of 27 & 28 Vict. c. 112, s. 13. Following the analogy of purely personal estates, to which by the preamble of the Act it is stated that it is desirable to assimilate the law affecting freehold, copyhold and leasehold estates, actual delivery in execution of interests in land constitutes the judgment creditor a secured creditor within the definition of such a creditor given by the Bankruptcy Act, 1869, in section 16, sub-section 5, and he is not subject to the limitations to which a judgment creditor pure and simple is subjected by the provisions of the 13th section of the 1 & 2 Vict. c. 110. Has there, then, been an appointment of a receiver in respect of the judgment debt, such as would constitute an actual delivery in execution? Mr. Romer says "No. On two grounds—first, there ought to be the form gone through of issuing a writ of *elegit* before jurisdiction is founded for the appointment of a receiver, although that writ would be absolutely inoperative; and, founding himself upon that, he further says that inasmuch as the order of the Master of the Rolls is capable of being read so as to refer only to the mortgage debt, in respect to which he had admittedly jurisdiction, it ought to be so read; and secondly, assuming that his first point is wrong, then that the appointment of the receiver did not constitute a delivery in equitable execution because the appointment was not perfected by security having been given." I cannot accede to either of these contentions. When the order of the Master of the Rolls is looked at in connection with the affidavit upon which it was founded, it is clear, to my mind, that it was intended to relate and did relate to the judgment debt as well as the mortgage debt; and I may add at the same time, although it is not necessary absolutely to decide the point, that I most cordially assent to what was said by the Master of the Rolls in *The Anglo-Italian Bank v. Davies* (2), that it is useless and absurd to go through the form of issuing a writ of *elegit* where the defendant's interest in land is of an equitable nature. As to the second point. Although the giving of security by the receiver is one



*Ex parte Morier; in re Willis, App.*

The son kept a separate private account with the same bankers.

Part of the testator's personal estate, at the time of his death, consisted of 8,601*l.* 9*s.* 5*d.* New Three per Cent. Annuities standing in his name, four debentures of the Great Eastern Railway Company, amounting together to 3,600*l.* and thirteen United States Bonds for 1,000 dollars each. The debentures and bonds were in the custody of the bankers.

An agreement in writing was made between the son and daughter on the 24th of August, 1877, that the 8,601*l.* 9*s.* 5*d.* New Three per Cent. Annuities should be transferred into the daughter's name, on account of her said legacy, and one debenture of the Great Eastern Railway debentures, for the sum of 1,000*l.* should also be transferred to and taken by her at its market value on the day of transfer, on further account of her said legacy, and a sum of New Three per Cent. Annuities sufficient to make up, with the 8,601*l.* 9*s.* 5*d.* and the value of the debenture if invested in New Three per Cent. Annuities on the day of transfer the whole 10,000*l.*, should be purchased out of the testator's estate in her name.

The agreement further provided, that ten of the said United States Bonds, representing 2,000*l.*, should be considered as set apart and held upon trust for the payment of the two annuities of 75*l.* and 25*l.* from the interest thereof, with power to resort to the capital in case such interest should be insufficient.

The said sum of 8,601*l.* 9*s.* 5*d.* Annuities and the 1,000*l.* Debenture were thereupon transferred into the sister's name, and a further sum of 348*l.* 10*s.* 7*d.* like annuities was purchased in her name to make up the value of the legacy.

In December, 1877, the rest of the railway debentures were sold by order of the executors, and the proceeds amounting to 2,629*l.* 14*s.* 9*d.* were placed to their credit at the bank; and on the same day the sum of 2,632*l.* 10*s.* was invested in the purchase of 2,600*l.* Grand Trunk Railway of Canada First Equipment Bonds, such last-mentioned sum being charged to the executors' account.

In January, 1878, in pursuance of a fresh arrangement come to between the son and daughter, 2,000*l.* of the Canada

Bonds were substituted for the ten United States Bonds; and on the 24th of January, 1878, the whole of the United States Bonds were sold by order of the executors, and the proceeds amounting to 2,749*l.* 10*s.* were placed to the executors' account.

By a memorandum dated the 1st of February, 1878, signed by the son, he agreed that the 2,000*l.* Canada Bonds should be considered as set apart and held to provide for the payment of the annuities, in the same manner as the eight United States Bonds, and that he would indemnify his sister against any loss or damage by such change of security; and the son and daughter gave an order to the bankers, requesting them to hold 2,000*l.* of the Equipment Bonds to their joint order, and to place the interest thereof to the executorship account, and to hold the remainder of such bonds and interest, subject to the sole order of the son; also to pay 1,200*l.* from the proceeds of the United States Bonds to the account of certain persons who were trustees of the son.

The bankers stopped payment on the 1st of March, 1878, and they afterwards filed a liquidation petition, upon which a trustee was appointed. On the day of the stoppage there was owing by the son to the bank, on his separate account, the sum of 1,206*l.* 2*s.* 3*d.* On the same date there was a balance of 1,404*l.* 5*s.* 6*d.*, owing by the bank on the executors' account. All the testator's debts, funeral and testamentary expenses and legacies had been paid, and the annuities provided for as before mentioned; all duties had been paid, leaving the estate administered, except for a small sum (10*l.*) for rates and taxes, namely, in respect of the testator's house up to Lady Day, 1878, and the solicitor's bill of charges (50*l.*) in relation to the executorship affairs. A cheque for these charges had been actually drawn upon the executors' account, but it was not presented before the stoppage.

The son claimed to prove in the liquidation of the bank for the sum of 198*l.* 3*s.* 3*d.*, being the difference between the two sums of 1,206*l.* 2*s.* 3*d.* and 1,404*l.* 5*s.* 6*d.*, claiming a right to set off against the balance owing from him to the bank, the balance owing from the bank on the executorship account, on the ground that

*Ex parte Morier; in re Willis, App.*

the testator's estate, having been cleared of all debts and liabilities, was a net residue to which he was entitled as residuary legatee. The trustee rejected the proof.

The son applied to the Bankruptcy Court for an order directing the trustee to accept the proof; and the Registrar, by an order dated the 25th of March, 1879, dismissed the summons, affirming the decision of the trustee, relying on the case of

*Middleton v. Pollock*, 44 Law J. Rep.

Chanc. 584; Law Rep. 20 Eq. 29.

The daughter, upon the application before the Registrar, made an affidavit in which she said, that she did not consider that at the time of the stoppage she or the other annuitant had any charge upon the balance of 1,404*l.* 5*s.* 6*d.* in respect of their annuities.

The son appealed.

*Mr. De Gez* and *Mr. Finlay Knight*, for the appellant.—The balance standing to the credit of the executors' account is a clear net residue which belongs to the appellant. There is no other claimant to it. It is so much an ascertained fund as to constitute a trust fund, which the appellant is absolutely and beneficially entitled to. In

*Bailey v. Finch*, 41 Law J. Rep. Q.B.

83; Law Rep. 7 Q.B. 34,

the plaintiff, as trustee in bankruptcy of a firm of bankers, sued the defendant for a balance due from him upon his account. He was held entitled to set off against that debt a balance due to him from the bankers as executor of A., whose residuary legatee he was, although under A.'s will there were certain bequests, one of 800*l.* and an annuity of 100*l.*, which at the time of the bankruptcy were unpaid; the defendant had, however, sufficient personal assets of A., exclusive of the balance in the bank, to provide for all the unpaid bequests. There the mere fact that A.'s estate had not been entirely wound up was not sufficient to deprive him of the right of set-off. It was held that he could, in fact, have recovered the balance, not as executor, but upon an ordinary money count.

So here the mere fact that the sum is still standing to the account of the son

and daughter as executors should not deprive the son of his right to set off the balance due to him from the bank, for the fact that the two small sums of 10*l.* and 50*l.* are not paid cannot make any real difference. Could not the son here recover that money or that account upon an ordinary money count without any reference to his character as executor? He is entitled to it as residuary legatee.

Then, again, in

*Bailey v. Johnson*, 40 Law J. Rep.

Exch. 189; Law Rep. 6 Exch. 279;

41 Law J. Rep. Exch. 211; Law

Rep. 7 Exch. 263,

an adjudication in bankruptcy, under the Act of 1869, was made against the defendant, and his trustee in bankruptcy sold part of the estate and paid the proceeds into a bank to the account which he kept as such trustee. The banking firm was afterwards adjudicated bankrupt, the sum paid in by the trustee being then standing to his credit in the bank's books. Afterwards the adjudication of the defendant was annulled, but no order was made, under section 81 of the Banking Act, revesting the property in the bankers. The customer was then held entitled to set off this sum standing to the credit of the trustee against the debt due from him personally.

There the money was paid in by the person who was trustee for the creditors, and may have had some claim on the firm.

[JAMES, L.J., referred to

*Jones v. Mossop*, 3 Hare, 568; 13

Law J. Rep. Chanc. 470.]

The son and daughter must be treated as in fact standing in the position of trustees for the son alone, within the principle of

*Cochrane v. Green*, 9 Com. B. Rep.

N.S. 448; 30 Law J. Rep. C.P. 97.

and there is thus a debt due from A., and a debt due to the trustees of A.

*Mr. Winslow* and *Mr. Romer*, for the trustee, were not heard.

JAMES, L.J.—I do not think we need call upon you, Mr. Winslow. This may be a hard case, but of course we must deal with it on general principles. In this case there were two accounts, one of which was an account of A. and the

*Ex parte Morier; in re Willis, App.*

other was the account of A. and B. It is said that A. and B. were executors, and that A. was the residuary legatee of the whole of the fund. The fund had never been liquidated so as to become a trust fund. There never had been what Mr. De Gex said there had been, anything approaching to a liquidation. There never was anything like or approaching to a settlement of accounts, so that we could say that at any particular moment the fund standing in the bank upon account of A. and B. had become, by the conduct of the parties A. and B., the trust moneys of A. so as to make it clear that they were trustees. Unless it could be made out that A. and B. were clearly trustees of this fund, of which A. was clearly *cestui que trust*, it seems to me there is not an equitable set-off; because the money is due in *autre droit*, and where the thing is due in *autre droit* the only exception that equity has introduced into the principle of a legal set-off is, when the money is really and truly the property of one man in the name of another, not when the result of the accounts if taken would shew that the ultimate balance would be his property, but when it is nothing but what we used to call in the Privy Council a *bonames* account, that is to say, an account put by one man into the name of another merely for his own convenience. I have referred in illustration of this principle to the case of *Jones v. Mossop*. There by great good luck the plaintiff was enabled to obtain an equitable set-off. The plaintiff in that case was a bond debtor of a man of the name of John Reed. John Reed died intestate, leaving his only son his sole next-of-kin. That son afterwards became insolvent and died, and the assignee in insolvency took out administration *de bonis non* to the father, and then sued the plaintiff upon the bond. It so happened that the bond debtor was a creditor of the son upon a distinct account, having paid a sum of money for which he was surety for the son. Then he filed a bill to have the debt due to him from the son set off against the bond upon which the assignee was suing him as the legal personal representative of the father. He had the great good luck to succeed in obtaining that set-off; but upon this

ground, that the answer of the defendant to his suit contained a distinct admission to this effect, that he believed the money due upon the bond was a part of the net residue of the estate of John Reed, and that the same became legally and equitably the absolute property of Richard Reed, his son, and that he (the son) became entitled to recover the moneys due thereon for his own use and benefit; and he admitted that he accepted the office of assignee, and that thereby the estate and effects of Richard, the son, became vested in him, and amongst other things the equitable beneficial ownership in the bond.

Now upon that the learned Judge says "a very slight variation in the answer from its present shape might have concluded the case as against the plaintiff on this motion. But if the effect of the answer be that before the 30th of January, 1839, the date of the vesting order, Richard Reed as administrator and next-of-kin of John Reed had become beneficial owner of the bond, there is no technical reason founded in the origin of his claim why the Court should not treat the bond as his, and give the plaintiff the equity he claims." That was because there was a clear admission that the whole thing had become legally and equitably the absolute property of Richard the son, and that he had become the beneficial owner, and it was that beneficial ownership which had become vested in the assignee in his insolvency. If there had been any variation it would not have become his absolutely. There was another point in that case that I may as well draw attention to, and that is this. There was this difficulty arising in the case, that in a subsequent part of the answer the defendant said that he believed certain of the debts of John Reed still remained undischarged, and that there were sufficient assets to pay the debts exclusive of the bond, and he submitted that he was not bound to set forth what debts were unpaid. The Vice-Chancellor said, "After the suggestion that the debts of John Reed had not been fully paid, I felt a difficulty in treating the money due upon the bond otherwise than as the assets of John Reed, but the admission in the answer is most distinct,

*Ex parte Morier ; in re Willis, App.*

that the bond itself is part of the beneficial estate of Richard Reed, and that the defendant obtained letters of administration empowering him to recover it, not as part of the estate of John, but as part of the estate of the insolvent. I think that that admission relieves the case of all difficulty with regard to the fact of the debts being due in different rights."

It is quite clear to me that if there had not been that distinct admission, the Vice-Chancellor would not have been able to allow the set-off.

That seems to me to be the principle on which we must go in this case. If the sister had joined the brother in acknowledging (either in words or in substance) that the money in the bank was part of the net residue belonging to the son, then this case would have been brought within the ordinary principle of a debt due from a man, and of a debt due to the trustee of that man. That seems to me to make a distinction between this case and those such as *Oochrane v. Green*, under which Mr. De Gex has suggested he is entitled to the net balance, whatever it may be. The net balance must be ascertained so as to make it a trust fund before you can apply those cases.

Now the only other case which it is important to deal with is the case of *Bailey v. Finch*, a case in the Queen's Bench. There all the learned Judges start with this (which of course distinguishes that case from this), that really in point of law there was but one account, and that in point of law there was no debt except upon taking the two accounts together. The mere fact of the two accounts being put in different names and in different pages would be no more than if one account had gone over from one page of the bank's ledger to another page, or if, as a mere matter of account, a farm account, or colliery account, and so on, had been kept merely for a man's own convenience for ascertaining how the moneys came in and how they had been applied.

There they start with that. Then they arrived at the conclusion that there being that legal right (not an equitable set-off) by putting the one account against the other to say there is a legal debt, being the balance of those items on both sides—

there was no sufficient notice of any sufficient equity to countervail that legal right. It is not necessary to consider exactly how the case would have stood if there had been any claim made by some persons having claims against the estate.

That is the *ratio decidendi*, and that is all that is necessary for us to deal with. But in this case it is quite clear (though no doubt the sister acted to assist her brother in recovering so much as he could of what they lost through the bankers' failure) that they were in the position of joint creditors of the bank, having joint assets in the bank, and having joint liabilities to discharge, not merely liabilities in respect of the estate; that is to say, there might have been annuities which had never been released and never fully provided for in the sense that any fund was so clearly set apart to answer this as to entitle the executors to deal with the rest of the assets as a residue. It is obvious that the two had incurred joint debts. There was a debt due to the solicitor, and there was a debt due for rent, rates and taxes, in respect of a leasehold house upon which the two were liable, and they had this joint credit to draw upon for the purpose of meeting those joint liabilities. It appears to me that we cannot, where there is a distinct estate, take an account, and then say upon taking the accounts of the estate there would be a large sum due to the residuary legatee, and that the fact that there was that large sum due to the residuary legatee, converts that which was a debt due from the bank to the two into a debt due to the two as trustees for one. That is a proceeding which never has been taken in cases of equitable set-off, which is itself an invention and deduction of the Courts of Equity. Equitable set-off has always been confined to cases where there was a plain and distinct admission or evidence of there being a simple liquidated and ascertained trust fund, and never applied to cases where upon a final settlement of all the accounts between two persons and one, the account would result in a balance in favour of the one. That seems to me to be the distinction between the cases, and I think the Court has never yet taken accounts to see how much of the pro-

*Ex parte Morier; in re Willis, App.*

perty standing in the name of two persons in a bank would ultimately upon the balance of the accounts turn out to be the property of one of them, so as to enable that balance to be a set-off as against a sum due from that one to the bank.

It may be a hard case, but I think we cannot dissent from the decision of the Registrar in this case without introducing altogether a new principle, which might be attended with great inconvenience; but, at all events, it would be introducing a new principle for which there is no ground, either on principle or authority.

BRETT, L.J.—I am of the same opinion, and for the same reasons.

COTTON, L.J.—I have arrived at the same conclusion. Of course we must not adapt our decisions to meet the exigencies of particular cases, unless we find that there is some rule or principle following out the principles of the cases, enabling us to say that a set-off can be allowed, and we may allow it. Now, the question is, whether or no there can be an equitable set-off as between the two accounts kept with the bank, that is to say, one in the name of Mr. Morier, and the other in the name of Mr. Morier and his sister, who are co-executors. It is perfectly clear that there can be no set-off at law, and Mr. De Gex says that we must look to the equitable rights; and, no doubt, if he could establish that the name of Miss Morier is there simply as joint trustee with her brother, and for her brother, then it would be, to all intents and purposes, in equity her brother's property, and he would be right in saying that there ought to be a set-off. But what is it? It is really part of the estate of the testator. It was, as I understand, either wholly or in part a sum standing to his credit at his death, and it was a sum wholly or in part transferred to them as executors as part of his estate; and it was clearly transferred to them for the purpose of the administration as an executorship account, that is to say, an account which was liable to pay all the debts and liabilities and all other payments, such as legacies, and also to make

provision for the annuities, and for all expenses which executors must incur in the administration of the estate of their testator. In my opinion we cannot hold that this, at the time of the bankruptcy, was no longer executorship money, but was money held by these two as trustees for Mr. Morier, unless we can see that that has been done which enables us to say that this was liquidated and ascertained to be a clear net residue, which Mr. Morier was entitled to have carried over to him absolutely, without any further accounts being taken, or anything further being done.

I looked at the agreement between the parties to see what really they had done, whether there had been any agreement or declaration by Miss Morier that, after the provision that had been made, the whole of the balance of the estate was the clear residue belonging to her brother. But that is not to be found. There was some agreement as to how certain things were to be provided for, and there was an arrangement as to a change of investment, and an agreement by the brother to indemnify the sister, but nothing like the taking of an account, so as to satisfactorily ascertain that this sum was no longer to be held by them in their joint names as executorship money, but to be held by them in their joint names as a simple trust fund, to which the brother was entitled as the absolute sole beneficial owner. Therefore, I am of opinion, that there being no set-off at law, we cannot hold that there can be a set-off in equity.

Now, there are only two cases which were very much pressed upon us by Mr. De Gex. *Bailey v. Johnson* was one, where the bankruptcy had been annulled, and a set-off was allowed as between the money which had been paid in by the treasurer before the bankruptcy was annulled, and money due to the bankers by the person who was so adjudicated a bankrupt. But then that was decided (certainly by the Court of Appeal in the Exchequer Chamber) on the ground that, under the Act of Parliament, on the annulling of the bankruptcy, the property reverted to the person who had been declared bankrupt from that time, and became his as from the time when it was

*Ex parte Morier; in re Willis, App.*

first paid into the bank, and, therefore, it was a case of set-off.

Now, in the other case, *Bailey v. Finch*, I think it really unnecessary to express any opinion whether or no the Court, in dealing with the matter, there correctly applied the equitable principles to the circumstances of the case, but what they did decide was this: they had to deal with a legal right of set-off, because both the accounts were the accounts of one person, and at law there was a right of set-off. But it was attempted to prevent that right arising by the fact that one of those accounts was opened in the name of a customer as executor. Now, the principle upon which they decided that case was this: there was a legal right to set-off, but was there a sufficient equitable ground for preventing the legal right of set-off being carried into effect? And, as I understand it, the principle of that decision (whether right or wrong) was this: not that this fund was a trust fund from the nature of the account, or that the bank had notice of that, but that they had notice that it was an account against which claims were likely to be made, and that if claims had at the time of the bankruptcy been made against it, that that would have prevented the legal right of set-off from arising; but that as it was not shewn that there were any equitable claims as against this fund, the legal right of set-off could not be interfered with. That is the *ratio decidendi*, as I understand it.

It is unnecessary to say how one would have decided such a case, or whether it was a correct application of the law, for it in no way touches this case. The question we have to deal with is, whether when there is no legal right of set-off, it can be said that the property so absolutely belongs to that one of these persons in whose joint names the account stands who has another account, that we must treat it as his personal property, and require the balance to be struck between those two accounts.

BRETT, L.J.—I should have said that, the account standing in the names of the brother and sister, the case could not have been brought within the rules of equit-

able set-off or mutual credit, unless the brother was so much the person solely beneficially interested that a Court of Equity would, without any terms or further enquiry, have obliged the sister to transfer the account into her brother's name alone.

JAMES, L.J.—The appeal must be dismissed with costs. I think what Lord Justice Brett has said expresses very nearly in the language of a code the whole of what Lord Justice Cotton and myself have been saying at greater length.

Solicitors—Bridges, Sawtell & Co., for appellant;  
Lawrance, Plews & Baker, for trustee.

[IN THE COURT OF APPEAL.]

JAMES, L.J.

BAGGALLAY, L.J.

THESIGER, L.J.

1879.

Nov. 27.

*In re SEWELL; ex parte SEWELL.*

*Bankruptcy Act, 1869—Debtor's Summons—Application to Dismiss—Security—Disputed Debt—Rules of Supreme Court, 1875, Order III. rule 6; Order XIV. rules 1, 4.*

*Where a debt is bona fide disputed, or the alleged debtor is solvent, a proceeding by way of debtor's summons is improper.*

*Where a debt is not disputed, the proper way to proceed is by specially indorsed writ, under Order III. rule 6, and Order XIV. rules 1, 4, of the Rules of the Court, 1875.*

*Proceedings by way of debtor's summons ought to be taken only under such circumstances as must necessarily lead to bankruptcy proceedings.*

Appeal from an order of Mr. Registrar Hazlitt, acting as Chief Judge, dismissing an application to dismiss a debtor's summons.

John Beale claimed to be a creditor of Sewell for the sum of 167l. 17s., for work and labour done and materials supplied by him to Sewell; and on the 13th of

*In re Sewell ; ex parte Sewell, App.*

October, 1879, Beale issued a debtor's summons in respect of that debt against Sewell.

Sewell applied to dismiss the summons. By an affidavit he denied his liability to pay the alleged debt. The Registrar dismissed his application. Sewell appealed.

The Court was of opinion, upon the evidence, that there was a *bona fide* dispute as to the debt. There was no allegation or suggestion made that Sewell was otherwise than quite solvent.

*Mr. Graham and Mr. Ingham*, for the appellant.—The proceedings on this summons should be stayed. A disputed liability is no basis of a debtor's summons—

*Ex parte Shepherd ; in re Shepherd*, 48 Law J. Rep. Bankr. 35 ; 10 Chanc. Div. 573.

The appellant is able and willing to give security, but there being a *bona fide* dispute, the summons should be stayed without security being required of him. See

*In re Latham ; ex parte Latham*, 4 Chanc. Div. 105 ;

*Ex parte Turner ; in re Turner*, 44 Law J. Rep. Chanc. 112 ; Law Rep. 10 Chanc. 175 ;

*Ex parte Rowan ; in re Kiddell*, 43 Law J. Rep. Bankr. 96 ; Law Rep. 9 Chanc. 617.

The appellant is willing to pay the alleged debt into Court, if necessary.

*Mr. De Gez and Mr. Yelverton* contended that, at all events, if the summons were stayed, it should be on the terms of giving security—that was the ordinary practice of the Court.

JAMES, L.J., said that a proceeding by way of debtor's summons was not to be encouraged, and particularly so in cases where the debt was *bona fide* disputed, and now under the Judicature Acts, by Orders III. rule 6, and XIV. rules 1 and 4, a creditor, whose debt was not disputed, could, by specially indorsed writ, obtain immediate judgment. That was now the proper form of proceeding to adopt, instead of proceeding by way of a debtor's summons. The proper order to

make would be that the order of the Registrar should be discharged, and all proceedings on the summons be stayed on the terms of the appellant's bringing into Court the sum claimed by way of security to abide the result of an action.

BAGGALLAY, L.J., concurred.

THESIGER, L.J., agreed that the proceedings on the summons should be stayed, and at the same time did not dissent from their being stayed only upon the terms of security being given ; but he only agreed to that course because it seemed to be in accordance with the previous decisions of the Court in cases where the weight of the evidence appeared to be in favour of the creditor. But for that he would have been of opinion that in a case like that before them, the proceedings on the summons ought to be stayed unconditionally. Although the creditor might be within his strict right under the Bankruptcy Act in issuing the summons, the Act was never meant to meet cases like the present, where the alleged debtor was a solvent man ; and no suggestion that he was otherwise than solvent had been made ; and when he set up a *bona fide* defence to the claim. The Act was not intended to put a screw on the debtor, whereas over and over again claims were brought under that Act to induce a person to pay a debt who would never have been forced to pay it under the ordinary process of the Court. A process by way of debtor's summons was only intended to be adopted under such circumstances as must obviously lead to bankruptcy proceedings. It was not intended to make the Bankruptcy Court a Court to decide disputed questions between solvent parties.

JAMES, L.J., expressed a hope that parties would bear in mind what Lord Justice Thesiger had just said.

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Solicitors—Monekton, Long & Co., for appellant ; G. H. Carthew, for respondent.

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## [IN THE COURT OF APPEAL.]

JAMES, L.J.

BAGGALLAY, L.J.

THESIGER, L.J.

1879.

Nov. 13, 27.

In re CHATTERTON; ex  
parte HEMMING.

*Bankruptcy—Liquidation by Arrangement—Discharge of Liquidating Debtor—Close of the Liquidation—Fraudulent Debt—Bankruptcy Act, 1869, ss. 28 & 49, 125, sub-sec. 10—Debtors Act, 1869 (32 & 33 Vict. c. 62), s. 15.*

*A liquidating debtor who has obtained an order for discharge, may, even though the liquidation be still pending, be sued for a debt incurred fraudulently, and this liability is not affected by section 15 of the Debtors Act, 1869.*

*Whether liquidations by arrangement are excluded from the scope of section 15 of the Debtors Act, 1869—Quære.*

*Semble—That section refers to arrangements made by a bankrupt with his trustees, which are made valid and binding on creditors under section 28 of the Bankruptcy Act, 1869.*

*The time from which dates the debtor's right to after-acquired property is also the time when the right of a creditor to take proceedings against the debtor's person or property in respect of a debt incurred by fraud accrues.*

F. B. Chatterton filed a petition for the liquidation of his affairs by arrangement. His creditors gave him an immediate discharge, which was duly certified by the Registrar.

After the discharge, but before the close of the liquidation proceedings, Hemming, who had proved a debt of 250*l.* in the liquidation, commenced an action against Chatterton in the Common Pleas Division for the 250*l.*, alleging that the debt had been contracted fraudulently.

An application was made to Mr. Registrar Murray, sitting as Chief Judge in Bankruptcy, and he made an order restraining all further proceedings in the action pending the liquidation.

Hemming appealed.

*Mr. Northmore Lawrence*, for the appellant.—The question is whether a debtor

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who has obtained his discharge, although no resolution closing the liquidation has been passed, cannot be proceeded against at law for a debt incurred by fraud?

Under section 49 of the Bankruptcy Act, 1869, it is the order of discharge that releases the debtor from all but the excepted debts and liabilities, and his liability in respect of his excepted undischarged debts must surely arise at the same time as the immunity in respect of his other debts.

A liquidating debtor's property acquired after his discharge vests not in his trustee, but in himself, although the liquidation is not closed—

*Ebbs v. Boulnois*, 44 Law J. Rep. Chanc. 691; Law Rep. 10 Chanc. 479,

and the debtor is then able to start again and incur fresh liabilities.

We are, therefore, at the same period of time entitled to proceed against the debtor for a debt which is undischarged.

In the case of

*Cobham v. Dalton*, 44 Law J. Rep. Chanc. 702; Law Rep. 10 Chanc. 655,

the debtor had not obtained his discharge; and he was therefore entitled to protection, under the 12th section, from any proceeding in respect of a provable debt, which a debt excepted under the 49th section is; but from that case it would appear that if he had obtained his discharge, he would not have been protected.

James, L.J., says that the 12th section was introduced to prevent any individual creditor from interfering with the bankrupt or his property during the bankruptcy. "When the order of discharge has been obtained, or the bankruptcy has been closed, the right of creditors whose debts are not barred to the future assets accrues. When that time arrives the creditor whose debt is not barred will have a right against the debtor's property independently of the bankruptcy, and may resort to his remedy against the person in order to enforce it." And Mellish, L.J., in the same case says, "The creditors whose debts are of such a nature that the bankrupt is not released from them by the order of discharge, have no preference against his estate in bankruptcy. All

*In re Chatterton; ex parte Hemming, App.*

property that comes in till he has obtained his discharge is divided among all his creditors equally; it is not till the order of discharge that these particular creditors have any rights different from those of the other creditors against the bankrupt's property."

From that case, though it is not expressly so laid down, yet the principle is clearly to be deduced that the order of discharge fixes the time at which our rights against the debtor arise.

That view is confirmed by section 15 of the Debtors Act, 1869 (32 & 33 Vict. c. 62). See

*Ex parte Halford; in re Jacobs*, 44 Law J. Rep. Bankr. 53; Law Rep. 19 Eq. 436.

*Mr. Winslow and Mr. A. à B. Terrell.*  
—The debt was not contracted by fraud.

[THESIGER, L.J., said that for the purpose of the present application upon the statement of claim, it must be taken to be an excepted debt under section 49.]

*Ex parte Halford (ubi supra)*

is no doubt an authority that in a case of composition a creditor who complains that his debt was contracted fraudulently cannot be restrained by the Court of Bankruptcy from bringing his action against the debtor, yet it cannot mean that anybody may bring his action merely by putting in an allegation of fraud. Section 15 (1) of the Debtors Act, 1869, merely makes a fraudulent debtor "liable for the unpaid balance of" the debt incurred by fraud. The creditor, therefore, can only bring his action for the "unpaid balance," and so he cannot bring it till the amount of the dividends which may have been received in the liquidation has been ascertained, that is, after deducting what he has received in the liquidation or composition. We submit that the

(1) 32 & 33 Vict. c. 62. s. 15: "Where a debtor makes any arrangement or composition with his creditors under the provisions of the Bankruptcy Act, 1869, he shall remain liable for the unpaid balance of any debt which he incurred or increased, or whereof before the date of the arrangement or composition he obtained forbearance, by any fraud, provided the defrauded creditor has not assented to the arrangement or composition otherwise than by proving his debt and accepting dividends."

Registrar's view was correct, namely, that it is premature to bring the action now. He must first ascertain what is the amount of the debt for which an action will lie, and to ascertain that he must wait till the close of the liquidation, and till all the dividends payable under the liquidation shall have been paid. See

Bankruptcy Rules, 289.

Then the debtor must not be harassed in the course of the liquidation, he may be wanted to assist the trustees and other creditors. See

*Ex parte Lopez*, 46 Law J. Rep.

Bankr. 95; Law Rep. 5 Ch. D. 65, where Jessel, M.R., says that he thinks it would be quite proper for the Bankruptcy Court to exercise its discretionary jurisdiction, and restrain a vexatious and unfounded action, such as this is.

Again, the Act of Parliament speaks of "provable debts," not "proved debts." Here the creditor has proved, and when there is no right of action expressly given to a creditor who has proved, the creditor must be held to have elected to take his remedy in the bankruptcy. See

*Oullen's Bankruptcy*, 1800, 148, 149;

*Ex parte Bozannet; in re Hardenbergh*, 1 Rose, 181;

*Ex parte Joseph; in re Leigh*, 1 Rose, 184;

*Bradley v. Millar*, 1 Rose, 273.

*Mr. Lawrence*, in reply.—The certificate of discharge in the case of a liquidating debtor has the same effect as in the case of a bankrupt—section 125, sub-section 10. Section 15 of the Debtors Act does not apply to liquidations by arrangement. Why should there be any difference between bankruptcy and liquidation for this purpose? It cannot apply to any arrangement in bankruptcy, except the arrangements under section 28. It applies to arrangements which fix the balance at once. This would reconcile the sections. Liquidation is not an arrangement, but all the property is given up.

If the Registrar's order is right, a majority of friendly creditors might keep the bankruptcy open for ever. A mere postponement of the order for discharge would not work the same injustice, for after-acquired property prior to discharge

*In re Chatterton; ex parte Hemming, App.*

belongs to the plaintiff and the other creditors in the liquidation, whereas here, the discharge having been granted, subsequent creditors would have priority over the plaintiff.

*Our. adv. vult.*

THESIGER, L.J. (on Nov. 27) delivered the judgment of the Court:—

In this case the creditors under a liquidation by arrangement gave the debtor his discharge as soon as the liquidation proceedings commenced, and such discharge was duly certified by the Registrar. The debtor was thereupon sued by the present appellant for a debt which in the statement of claim delivered in the action is alleged to have been, and must for the purposes of this appeal be taken to have been, incurred by means of fraud on the part of the defendant. The debt had been previously made the subject of proof in the liquidation, and upon application made to the Registrar sitting as Chief Judge, an order was made by which further proceedings in the action were restrained pending the liquidation. We are of opinion that this order must be set aside. By section 49 of the Bankruptcy Act, 1869, it is provided that an order of discharge shall not release a bankrupt "from any debt or liability incurred by means of any fraud or breach of trust." A liquidating debtor is placed in the same position in this respect as a bankrupt by the 10th sub-section of section 125 of the same Act. In reference to these sections, the old Court of Appeal in Chancery decided in *Cobham v. Dalton* that a creditor who, before the order of discharge is obtained, takes proceedings against the person or property of a debtor in respect of a debt or liability incurred by means of fraud, may and ought to be restrained. It was not absolutely necessary for the Court in that case to decide the further question whether after the order of discharge such restraint should be removed, but it was necessarily involved in the discussion of the case, and the opinions of the members of the Court upon it were very clearly expressed. Mellish, L.J. (at p. 657), said, "that as soon as the order of discharge

has been obtained, then, as the Act says, that a debtor is not released from a debt of this description, the creditor can enforce his remedy against the after-acquired property or the person of the debtor." James, L.J. (at p. 656), used language to the same effect; he said, "When the order of discharge has been obtained, or the bankruptcy has been closed, the right of creditors, whose debts are not barred, to the future assets accrues, the creditors whose debts are barred having lost all remedy. When that time arrives, the creditor whose debts are not barred will have a right against the debtor's property, independently of the bankruptcy, and may resort to his remedy against the person, in order to enforce it." From both of the passages quoted may clearly be collected the view that the time from which dates the debtor's right to after-acquired property must be the time when the right of a creditor to take proceedings in respect of a debt incurred by means of fraud, either against the debtor's property or person accrues. If this be so, then the case of *Ebbs v. Boulnois* having laid down that property acquired by a liquidating debtor after his discharge does not vest in his trustee, although the liquidation be not closed, in other words, having laid down that, after the discharge, the debtor is in the same position as if the barred creditor had actually released him, and his future property is his own, it follows that the time when the order of discharge becomes effectual is the time when the excepted creditors' rights accrue. And this appears to us, independently of authority, the reasonable interpretation of the meaning of the Legislature as expressed in the Bankruptcy Act. What can be more reasonable than that the debtor, when he obtains the benefit of the provisions of section 49 of the Act in respect of debts from which he is discharged, should at the same time feel the burden of those to which he is left liable? Why, on the other hand, should the trust or fraud creditor be remitted to the close of the liquidation for a remedy attaching to assets which are freed from liquidation, and which, if he is delayed

*In re Chatterton ; ex parte Hemming, App.*

in asserting his rights, may be squandered by the debtor, or be seized by fresh creditors asserting and enforcing subsequently-acquired claims? It has been urged upon us that during the continuance of the liquidation proceedings the debtor ought to be relieved from the harassment of legal proceedings, so as to enable him to give his time and attention to the winding up of his estate; but that contention can have no legal force when urged in reference to a period of time at which admittedly the debtor is free to embark in new business, and to render himself liable to legal proceedings in respect of newly-incurred liabilities. A more plausible argument has been founded upon the wording of section 15 of the Debtors Act, 1869, which is in these terms—[His Lordship read the section]. It is said that the creditor in respect of a debt incurred by means of a fraud is by virtue of this section limited as regards his right of action to the unpaid balance of his debt, and that consequently he must wait until the close of the liquidation in order that the balance may be ascertained. There are manifest objections to this reading of the section. In the first place, it does not deal at all with debts or liabilities incurred by means of a breach of trust, and yet they are, by section 49 of the Bankruptcy Act, put in the same category with debts or liabilities incurred by means of fraud; and are, so far as that Act is concerned, obviously intended to be dealt with in the same way. And in the second place it leaves even debts or liabilities incurred by means of fraud untouched in the case of bankruptcy as opposed to a liquidation by arrangement or composition. No reason has been suggested why this distinction should be made. On the other hand, it has been pointed out that there are matters untouched by the Bankruptcy Act to which the section under consideration might be applied. It is said that it relates, not to liquidations by arrangement under section 125 of the Bankruptcy Act, but to arrangements made by a bankrupt with his trustees, such as are referred to and made valid and binding upon creditors in and under the provi-

sions of section 28 of that Act. This view derives force from the use by the draftsman of the expression, "where a debtor makes any arrangement," which is contrasted with the expression, "liquidation by arrangement," used in the preceding section of the Debtors Act, and is scarcely appropriate to such a mode of winding up the debtor's affairs. It is further strengthened by the consideration that the Bankruptcy Act does not contain any clause by which arrangements under section 28 and compositions under that section or under section 126, are affected in any way similar to that prescribed in reference to bankruptcy and liquidation by arrangement by section 49 of the Act. It is, however, unnecessary for us in this case to define the full force and meaning of section 15 of the Debtors Act, or to decide that liquidations by arrangement are necessarily excluded from its scope. It is sufficient for us to say that its terms are not such as to require us to hold, and we cannot hold, that it qualifies or limits in the case of a liquidation by arrangement, and in respect of a debt incurred by means of a fraud, rights which, in the case of a bankruptcy in respect of such a debt, or in the case both of bankruptcy and liquidation by arrangement in respect of a debt incurred by means of a breach of trust, the Bankruptcy Act, in our opinion, most clearly gives. If the creditor has accepted dividends, the debtor will only remain liable for the unpaid balance of the debt; if no dividends have been paid, the creditor may sue for the whole of the debt, but the debtor will not ultimately be damnified beyond what the Bankruptcy Act contemplates, for he is, of course, entitled to have set apart in the name of his trust or fraud creditors, *pari passu* with the ordinary creditors, dividends under the liquidation, and if he has paid any one of such fraud or trust creditors in full, he is entitled to stand in his shoes, and receive the dividends set apart for that particular creditor. He, in the result, pays out of assets freed from the liquidation no more than the balance of the debt. The rights of the general body of creditors are at the same time in no way interfered with.

*In re Chatterton; ex parte Hemming, App.*

For the reasons now given we are of opinion that there was no sufficient ground for restraining the appellant's proceedings, and that this appeal must be allowed.

Solicitors—Harper, Broad & Battecock, for appellant; H. W. Chatterton, for respondent.

[IN THE COURT OF APPEAL.]

JAMES, L.J.	} <i>In re HOOPER;</i> <i>ex parte BANCO DE PORTUGAL.</i>
BRETT, L.J.	
COTTON, L.J.	
1880. Feb. 23.	

*Court of Appeal, in Bankruptcy—Pending Appeal to House of Lords—Rehearing to introduce fresh Evidence—Jurisdiction—The Bankruptcy Act, 1869, sect. 71.*

*The Court of Appeal in Bankruptcy will correct accidental slips, mistakes or omissions made in drawing up its orders. It has also jurisdiction, under section 71 of the Bankruptcy Act, 1869, to rehear upon fresh evidence, and to alter, vary or rescind its orders; but it will not rehear an order under appeal to the House of Lords, merely to insert in the order, for the purposes of such appeal, evidence that was not before it.*

*Semble,—A re-hearing upon fresh evidence may be granted, notwithstanding a pending appeal to the House of Lords, but only under special circumstances.*

In this case the Banco de Portugal had appealed to the House of Lords from the decision of the Court of Appeal in Bankruptcy. See

*In re Hooper; ex parte Banco de Portugal*, 48 Law J. Rep. Bankr. 73; Law Rep. 11 Ch. D. 317.

A motion was now made on behalf of the bank, that the order under appeal to the House of Lords might be re-heard *pro forma*, in order that a document might be recited in it as having been read to the Court of Appeal, which in fact was not read to that Court.

The object of the application was to

enable the bank to use the document in question as evidence in the appeal before the House of Lords. A copy of the document had been handed to the counsel of the bank during the hearing of the appeal, but the document, which was a certificate from a foreign Court, could not be then adduced in evidence, because it had not been duly authenticated.

*Mr. Cookson and Mr. S. Woolf*, for the motion.—The evidence we now seek to bring in is an important official document, and materially affects our position, and proves conclusively the fact we relied on here, namely, that the bankruptcy of the firm in Portugal preceded that in London. The House of Lords will not take cognisance of any evidence not heard or entered in the Court below—

*Baesh v. Moore*, 3 Bro. Parl. Ca. 546;

*Attwood v. Small*, 6 Cl. & F. 301-4, we are therefore obliged to apply to this Court for assistance. This application is not governed by the decision in

*Flower v. Lloyd*, 46 Law J. Rep. Chanc. 838; Law Rep. 6 Ch. D. 297.

That was an appeal from the High Court of Justice, but the London Court of Bankruptcy is no part of the High Court of Justice—

The Judicature Act, 1873, secs. 4, 16;

The Judicature Act, 1875, sect. 9.

And this Court, as the Court of Appeal in Bankruptcy, has ample jurisdiction under

The Bankruptcy Act, 1869, sec. 71, to re-hear, alter, vary and rescind its orders, and the fact of a pending appeal to the House of Lords makes no difference—

*Ex parte Reddish*, Law Rep. 5 Ch. D. 882;

*Ex parte Keighley*, 44 Law J. Rep. Bankr. 13; Law Rep. 9 Chanc. 667.

*Mr. De Gex and Mr. McCall*, *contra*, were not heard.

JAMES, L.J.—It appears to me there are several objections to this application. First of all, the substance of the application is this, that we should introduce into our order, as part of the evidence that

*In re Hooper ; ex parte Banco de Portugal, App.*

was before us, that which was not before us at all. We should, therefore, be introducing into our order evidence we had not before us. If this document had been before us, and by a mere slip in entering the order, or by some means or other it had not been brought to the attention of the Registrar, although part of the materials before us, we might have corrected that under the general order. But here we are asked to say that because some evidence was not tendered, which might and ought to have been tendered if they had got it, and which now is thought material, that we are to introduce that into our order. That is a thing quite out of the question. We have no authority for doing that. Then it is said that the application is an application for a re-hearing. Assuming we have power to re-hear, I certainly, for one, will not re-hear this case on these materials. If we did re-hear it, not for the purpose of rescinding or varying the order we had made, but for the purpose of introducing into it fresh evidence, that, in my opinion, is not dealing fairly with the jurisdiction of the Court. We are not asked to rescind or vary our order. If we were asked to rescind it, and ought to rescind it, upon this evidence there would be a fresh order, which would have to be the subject of a fresh appeal. We refuse to re-hear. The parties may go to the House of Lords, and will have the advantage of going to the House of Lords, and saying, "We applied to the Court below, to re-hear, and they refused." If they can get the House of Lords to admit this document as part of the evidence on the appeal, that would be a matter for the House of Lords to deal with. We have nothing to do with the House of Lords, and we have not, it appears to me, any jurisdiction to grant this application.

BRETT, L.J.—The first point taken in argument was, assuming there was no appeal to the House of Lords, we might have re-heard the case, and have admitted this additional document, which was not before the Court. It is not necessary to decide that point. I am inclined to think we might. But assuming we might, there is an appeal to the House

of Lords against the order already made by this Court. That appeal is pending, and what we are asked to do is either to alter that order, leaving the date of it as it stands, and leaving the appeal against it as it stands, or to set aside that order and make a new order against which the present appeal will stand. Now it seems to me that if we were to do the first, that is to say, to alter the order without altering the date, by putting into the order, as a ground of it, something which was not before the Court at the time the order was made, we should be doing very wrong. We should be practically stating that something had happened before us at the time that order was made which did not happen before us, and it would be an untrue record. Therefore, in point of truth, we are asked to set aside the former order and make a new order, the applicant not proposing to withdraw the appeal, but to leave the appeal to stand against the new order. Then arises the objection which was pointed out by the Lord Justice, and it seems to me an insuperable objection, namely, that in that case the appeal would be dated some months before, and be supposed to be an appeal against an order made afterwards. It seems to me we have no authority to deal in that way with the House of Lords, and it seems a thing that we have no jurisdiction to do. Again, supposing we had, then comes the objection mentioned by Lord Justice Cotton, which is this, that even supposing we had power and jurisdiction to do it, yet, in point of truth, the fact which it is desired now to introduce was known to the counsel in time for them to have asked the Court to postpone the making of the order, and to make the order after the fact which was known to them had been manifested by due evidence. That, of itself, would seem to me to be a fatal objection to this application. Therefore there are two fatal objections, if not more, which probably Mr. De Gex would have pointed out to us if he had been heard.

COTTON, L.J.—In this case it is not necessary to give any opinion as to whether this Court has power to re-hear, even after there has been a petition of

*In re Hooper; ex parte Banco de Portugal, App.*

appeal to the House of Lords on an order made in a matter heard by itself. In mentioning that, we must consider what is really meant by re-hearing. It is where the party, who had been before the Court, brings fresh evidence, and asks the Court, on that fresh evidence, to re-hear the case and make an order different from that which, in fact, the Court has made; that would in no way disturb or alter the order before the House of Lords, but it would be a fresh order made on fresh evidence, and possibly the Court may have that power, even though there is an appeal on its former order presented to the House of Lords. I give no opinion for or against such a proceeding. I do say this, that in the event of an appeal to the House of Lords, and an application for a re-hearing made to this Court, the Court, if it has jurisdiction, ought to exercise it with the greatest care and discretion, and ought not to do it except in a very strong case. But here, although it is a re-hearing in name, it is not in substance. We are not asked to re-hear the case for the purpose of coming to any other decision than the Court has arrived at on the hearing. What we are asked to do is to introduce into the order under appeal to the House of Lords, so that that appeal may stand, a document which was not before the Court, and which may be material for the purpose of enabling the House of Lords to come to a decision on the question. If we have jurisdiction to do that, in my opinion we decidedly ought not to do it. First of all, because that document was in Court, and in the hands of counsel while the case was proceeding, and if counsel had desired to have that document put in, so that the case might go to the House of Lords with materials which were important in the opinion of counsel, an application ought then to have been made to the Court. It would be representing to the House of Lords that that was before this Court which was not before the Court, and in my opinion that ought not to be done. If we are to make a fresh order, the present appeal is gone, and the proper course would have been for the appellant to have withdrawn the present appeal, and then, in withdrawing the appeal,

asked us to re-hear the case. In my opinion, we cannot in any way accede to this application. But I agree with Lord Justice James, that our decision in this case must in no way be taken as a decision that this Court has not power to correct an accidental slip in its decree or orders after an appeal to the House of Lords. If it had been a matter of evidence which had been before the Court, but by some slip in drawing up the order had not been mentioned in the order, or there had been in some way or other an accidental slip which practically prevented the House of Lords from listening to that which, in reality and substance, was before this Court, and considered by it in giving its decision; such a case is entirely untouched by our decision in the present case.

*Application accordingly refused with costs.*

Solicitors—Michael Abrahams & Co., for applicant; Loxley & Morley, for respondent.

BACON, C.J. } *In re GOURLAY; ex parte*  
1880. } *ORMANDY.*  
Feb. 16.

*Liquidation — Security — Judgment — Writ of "Elegit" — Seizure — Filing of Petition—Bankruptcy Act, 1869, ss. 12, 16 (sub-section 5), s. 87.*

*Section 87 of the Bankruptcy Act, 1869, does not apply to a judgment executed by means of a writ of elegit. And therefore, the sheriff having under such a writ seized goods of a debtor before he committed the act of bankruptcy, though the inquisition of the jury as to the value of the goods was not completed until after the act of bankruptcy,—*

*Held, that the execution creditor held a security within the meaning of sections 12 and 16 (sub-sect. 5), and was not deprived of it by section 87.*

Appeal from the Blackburn County Court.

The debtor, a trader, filed a petition for liquidation in the County Court at

*In re Gourlay; ex parte Ormandy.*

10.30 a.m. on the 1st of July, 1879, and a trustee was subsequently appointed. The appellant, William Ormandy, on the 28th of June, 1879, recovered judgment in an action against the debtor for 203*l.* 8*s.* 11*d.* and interest and costs, and on the same day sued out a writ of *elegit* against the goods and chattels and lands of the debtor, and placed the writ in the hands of the sheriff of Lancashire for execution. The sheriff seized on the 30th of June. On the 1st of July the sheriff empanelled a jury, who found "that the debtor was possessed of the goods and chattels in the schedule to such inquisition mentioned of the value of 327*l.*, which said goods and chattels the said sheriff alleged that he had caused to be delivered to the said William Ormandy, to hold as his own, in satisfaction of his debt costs and interest in such writ named." The inquisition was not completed till 11.15 a.m. on the 1st of July, and the goods were not delivered to Ormandy till the afternoon of the same day. An interim injunction had been obtained, restraining Ormandy from taking further proceedings under his execution, and on an application by the trustee to make the injunction absolute, the County Court Judge held, first, that the sheriff had no power to seize the goods under the *elegit* before they had been appraised by the jury, and that consequently Ormandy had no security until the inquisition was completed, which was after the filing of the petition, second, that if Ormandy had ever had a security, the 87th section of the Bankruptcy Act, 1869, deprived him of it, and third, that the goods were consequently the property of the trustee. The injunction was therefore made absolute.

From this order Ormandy now appealed.

*Mr. Winslow and Mr. E. C. Willis*, for the appellant.—The goods were seized before the filing of the petition, and so the appellant is a secured creditor within sections 12 and 16 (sub-sect. 5) of the Bankruptcy Act, 1869, and cannot be deprived of the fruits of his execution, unless it be by virtue of section 87—

*Ex parte Villars; in re Rogers*, 43 Law J. Rep. Bankr. 76; Law Rep. 9 Chanc. 432;

*Ex parte Rayner; in re Johnson*, 41 Law J. Rep. Bankr. 26; Law Rep. 7 Chanc. 325.

The question, then, is, does section 87 apply where the judgment is enforced by means of a writ of *elegit* instead of a *fi. fa.*? We submit it does not, for it only deals with a case in which a sale has taken or may take place, not with one where there can never be proceeds of sale.

*Mr. De Gez and Mr. Jordan*, for the trustee.—The execution creditor had no security until the jury had appraised the value of the goods under the writ. The mere delivery of the writ to the sheriff did not make the creditor a secured creditor—

*Ex parte Rayner; in re Johnson (ubi supra).*

But if it did, he is deprived of the benefit of his security by section 87, which must have been meant to apply to writs of *elegit* as well as writs of *fi. fa.*, for otherwise that section will in future be evaded merely by issuing an *elegit* instead of a *fi. fa.*

They also referred to

1 *Dyer*, 100 (a);

*In re Browne*, 40 Law J. Rep. Bankr. 46; Law Rep. 12 Eq. 137, *nom.*

*Ex parte Hughes.*

BACON, C.J.—I have listened with the greatest interest to the ingenious arguments addressed to me in this case, and I have now to consider what is the effect of a judgment executed by means of a writ of *elegit*, as compared with a writ of *fi. fa.*, with reference to the 87th section of the Bankruptcy Act.

The sheriff, under a writ of *elegit*, obviously takes possession of the goods, and if he had not done so, the jury could not have been put in motion. The writ of *elegit* directs the sheriff "to cause to be delivered to the said A. B., by a reasonable price and extent, all the goods and chattels of the said C. D.," &c. [His Lordship read from the ordinary form of a writ of *elegit*.] If the writ is to have any force, the judgment creditor by vir-

*In re Gourlay; ex parte Ormandy.*

ties of it obtained a security. Then it is said that, because the inquisition states that the goods are the goods of the debtor, there could be no security until after inquisition found; but that cannot alter the fact, for the inquisition is only a means of carrying out the judgment.

It was also argued that, to hold that this creditor had a security, would be to evade the 87th section of the Bankruptcy Act, 1869. I cannot add words to the section, and the section as it stands only applies to a case where the sheriff is directed to sell; it is a sort of penalty in favour of the general creditors of a bankrupt. If creditors do in consequence of my judgment take to issuing writs of *elegit* instead of writs of *fiat facias*, for the purpose of evading the 87th section, I cannot help it. I quite admit the mischief pointed out by the trustee's counsel, but I cannot alter the words of that section, which, in my opinion, do not apply to a judgment executed by means of a writ of *elegit*.

*Order discharged with costs.*

Solicitors—Scott & Co., agents for Frank Taylor, Barrow-in-Furness, for appellant; Shaw & Tremellen, agents for Hall & Son, Blackburn, for respondent.

[IN THE COURT OF APPEAL.]

JAMES, L.J.  
BAGGALLAY, L.J.  
COTTON, L.J. } *Ex parte EVANS; in re*  
1880. BAUM.  
Jan. 15.

*Bankruptcy Act, 1869, sect. 80. sub-sect. 8—Bankruptcy Rules, 1870, 85, 86, 271, 273, 303, 304, 305—Present at Meeting—Present but not voting at General Meeting of Creditors.*

*At a meeting convened under rule 305 of the Bankruptcy Rules, 1870, certain resolutions were passed by a statutory majority removing a trustee. At this meeting S., who was a creditor for a small amount and also proxy for another large creditor, attended.*

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*The proofs for his own and his principal's debts had been put in and filed some years previously at the first meeting. He stayed throughout the meeting but did not sign the resolutions, and stated that he did not intend to take any part in the meeting. Registration of the resolutions was objected to on the ground that S. must be taken to have attended on the authority of Ex parte Orde; in re Horsley (40 Law J. Rep. Bankr. 60; Law Rep. 6 Chanc. 881), he having been present and not having withdrawn the proof. If S. had been counted as present on behalf of his principal, the resolutions would not have been passed by the statutory majority:—Held, on appeal from the Registrar, that the resolutions were properly registered, that even if the principle of the above case would have applied to S. in his own character as creditor (the smallness of his debt rendering the decision unnecessary) it could not apply to the case of his principal as being a person "present by proxy," and that therefore the principal of S. in spite of S.'s actual presence could not be said to be present at that meeting, S. having done no act to shew that he intended to be present there on her behalf.*

*Ex parte Orde distinguished.*

*Quære, whether the principle of that case applies to any meeting held after the registration of liquidation or composition proceedings.*

*The fact that some of the creditors signing the notice summoning the meeting under rule 305 and voting on the resolutions at the meeting, had previously sold their debts to another creditor was held not to constitute an objection to the notice or to the resolutions.*

This was an appeal against a decision of Mr. Registrar Murray, acting as Chief Judge in Bankruptcy.

Baum, the debtor, filed a petition for liquidation on the 1st of September, 1876, and a liquidation by arrangement was resolved upon and Cooper was appointed trustee.

On the 20th of June, 1879, two of the creditors who had proved their debts in the liquidation, gave notice under rule 305, with the concurrence of one-fourth in value of the creditors who had proved their debts, summoning a general meet-

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*Ex parte Evans ; in re Baum, App.*

ing of the creditors of Baum for the 1st of July, 1879, for the purpose of removing Cooper and appointing another trustee in his place.

This notice was signed by A. and H. Isaacs, and among other creditors Lebedore, Oak, Simpson & Co. and Moore Brothers.

On the meeting being held, resolutions for the removal of Cooper and substitution of another trustee in his place were passed by a majority in value of the creditors, whose names were inserted in the list made up at the meeting of creditors who were present at such meeting either personally or by proxy.

The registration of these resolutions was opposed by Evans and other creditors on the following grounds:—First, that Lebedore, Oak, Simpson & Co. and Moore Brothers, whose names were signed on the notice, had, in 1877, sold their debts to A. Isaacs, although their proofs were still on the file in their own names.

The second objection, which was principally relied upon, was as follows:—A Mr. Scrivener, who was a creditor of Baum for 105*l.*, and also a proxy for a Mrs. Simpson, who was a creditor for 5,473*l.*, attended at the meeting, but took no part in it, and neither he nor his principal was entered on the list of creditors present in person or by proxy. Scrivener filed an affidavit in which he stated that although he was present at the meeting he had no intention of taking any part in it either on his own behalf or that of Mrs. Simpson, that being asked by Mr. Roberts, the solicitor for Isaacs, whether he was going to vote for and sign the resolution for the removal, he said, "No, I am not going to vote."

If Mrs. Simpson had been entered on the list of creditors present, as present either in person or by proxy at the meeting, there would not have been the proper statutory majority in favour of the resolutions.

Mr. Scrivener's own debt was so small as to make it immaterial whether he was or not entered in the list as present.

The Registrar overruled the objections and registered the resolution.

Evans and the opposing creditors appealed.

*Mr. Winslow and Mr. R. Vaughan Williams*, for the appellants.—The creditors who had sold their debts to Isaacs were not such creditors as could sign the notice required by the rule 305. They had no longer an interest in the proceedings, and their votes should not be counted as forming part of the statutory majority in favour of the resolutions.

Then Scrivener must be taken as being present on his own behalf and also as proxy for Mrs. Simpson. Every creditor who is actually present and does not withdraw his proof must be counted as present for ascertaining the majority of votes under the rule of

*Ex parte Pooley ; in re Russell*, 40 Law J. Rep. Bankr. 41 ; Law Rep. 5 Chanc. 722 ;

*Ex parte Orde ; in re Horsley (ubi supra)*

and

Bankruptcy Rules, rule 273.

[JAMES, L.J.—But here the creditor could not do, what we pointed out was possible in that case, viz., withdraw his proof.]

No, but he had two courses—he might have had the proof taken off the file, or out of the trustees' hands.

[JAMES, L.J.—No, he could not have taken it off the file at the meeting.]

The 271st and 273rd rules apply to proceedings in liquidation as this is. The former rule contemplates the possibility that some of the proofs may have been already filed. If it be held that he cannot withdraw his proof when it has been filed, it confines the 273rd rule to the first meeting. But if he cannot withdraw his proof he must then personally withdraw.

*Mr. E. C. Willis and Mr. H. Reed*, for the respondents.—It is proved that Scrivener took no part in the meeting, he had no interest in knowing what was going on, and he distinctly stated that he intended to do nothing.

The cases quoted were cases where the creditors present took an active part in handing in their proofs. That could only apply to the case of a first meeting. Here Scrivener had handed in his proofs two or three years ago at the first meeting. The proof could not have been withdrawn

*Ex parte Evans; in re Baum, App.*

after registration of the resolutions for liquidation passed at the first meeting, without the order of the Court.

*Mr. Winslow* in reply.—Scrivener was there personally. There is no provision in the statute for taking negative votes.

[JAMES, L.J.—How do you make out that he was present as proxy?]

A proxy represents his principal for all purposes during the bankruptcy proceedings.

Bankruptcy Act, 1869, s. 80, subsect. 8; Bankruptcy Rules, 85, 86.

We say that the principle of

*Ex parte Orde* (*ubi supra*)

applies. This was not a true list, for Roberts, Isaacs' solicitor, had no right to exclude Scrivener's name, and Mrs. Simpson's name ought also to be entered in the list as she was present if her proxy was.

JAMES, L.J.—In this case the first objection taken against the registration of the resolutions is that some of the votes constituting the majority were the votes of persons who had sold their debts to Isaacs, who had a personal interest in calling a meeting to remove Cooper, and that therefore these votes should not have been admitted. There is nothing in that objection—there is nothing fiduciary in the position of these creditors. Nor is it a case where a majority standing in a fiduciary position are exercising any undue influence and binding the rights of the minority.

The next objection is a more serious one as to the application of two cases decided by the old Court of Chancery, namely, *Ex parte Pooley* and *Ex parte Orde*, that is, what is to be done with persons who are present at a meeting but do not sign the paper assenting to the resolutions. In the case of *Ex parte Orde*, the Court held that a creditor who was present but did not sign the resolutions must be considered as being present at the meeting and be entered in the total number of creditors present and voting, unless they withdrew their proof under rule 273. Without saying how far those cases would apply to Mr. Scrivener personally with regard to such a meeting as this, it appears quite clear

that the principle of those cases does not apply to the case of a creditor who is represented by another creditor as his proxy. I am of opinion that the principle does not apply to the case of persons who are said to be present by proxies. In the first place such persons are not personally present, and in the next how does it appear that the proxy continued in force? A creditor might very well be present on his own behalf without being present on behalf of another, and if he did not intend to be present in his character of proxy we cannot compel him to be there in that character. It is quite easy to take a list of the persons present, and to ask them for whom they appear, and it ought to be stated in the list for whom the parties are present as proxies. If a creditor who is present does not say that he is present as proxy for some one else, his principal cannot be taken to be present. The names of the proxies would not appear in the list, it would only shew the names of the principals who are present either personally or by proxy. The principal might have revoked his proxy, or he might have instructed his proxy to do nothing at that particular meeting. There is nothing here to shew that Mr. Scrivener was present at this meeting as proxy for Mrs. Simpson, and consequently her vote cannot be counted in reckoning the majority of votes.

BAGGALLAY, L.J.—I entirely concur in the observations of the Lord Justice, and I will only add that I desire to keep my mind open on the question whether the principle enunciated in the cases of *Ex parte Pooley* and *Ex parte Orde* applies at all or ought to apply to meetings held after the registration of liquidation or composition resolutions passed at the first meeting.

COTTON, L.J.—I agree with the rest of the Court that Mrs. Simpson cannot be counted as present, and therefore it is better to express no opinion as to whether Mr. Scrivener must be considered as having been present on his own behalf. Can it be said that Mrs. Simpson was present there personally or by proxy? She was clearly not present personally. What

*Ex parte Evans ; in re Baum, App.*

is a proxy? It is an authority to her agent to act for her at any meeting, it did not compel him to be present at every meeting. It was simply an authority, and she might, without revoking that proxy, give him directions which might make it wrong for him to appear at any particular meeting. It is not that the proxy is for all purposes the principal, but that he has power to represent his principal for all purposes. They are strong words in sub-section 8 of section 80, but we must give a reasonable construction to them. The practice is this, when the list of creditors present is made out, the name of the principal who gives the authority, and not the proxy is inserted, and if Mrs. Simpson had been treated as present by proxy, her name and not Mr. Scrivener's would have been inserted. Here the name of Mrs. Simpson does not appear in the list, and therefore *prima facie* she is not to be taken into account. In my opinion it does not necessarily follow that because her proxy was present at the meeting she was brought there by representation. If he could not have been properly present at the meeting except as her proxy the case would be different, but he did not appear as her proxy, and it would be wrong to hold, when he had a right to be present on his own behalf, that he was also present on Mrs. Simpson's behalf, when he had done no act to shew that he intended to be present in the character of her proxy.

Solicitors—Appellant in person ; W. H. Roberts, for respondents.

[IN THE COURT OF APPEAL.]

JAMES, L.J.	} <i>In re ADAMS ; ex parte GRIFFIN.</i>
BRETT, L.J.	
COTTON, L.J.	
1880.	
March 4.	

*Costs in Bankruptcy—Costs in the High Court—Set-off—Practice.*

*The Court of Bankruptcy will not allow costs incurred in any Division of the*

*High Court to be set off against costs in Bankruptcy, although such costs be incurred in proceedings between substantially the same parties as are litigating in Bankruptcy.*

This was an appeal from Mr. Registrar Hazlitt, acting as Chief Judge.

In April, 1878, one Culley bought up a judgment debt for 1,876*l.* which had been recovered some time previously against Adams in an action of *Edenborough v. Adams* in the Queen's Bench Division.

Culley was a clerk of one J. Griffin, and was in fact a trustee of the judgment debt for Griffin, who was the real purchaser.

On the 1st of April, 1879, a petition in bankruptcy presented by Culley against Adams was dismissed with costs, on the ground that Culley, having no beneficial interest in the debt and being a bare trustee for Griffin, could not sustain the petition alone, but that Griffin must also join. See

*Ex parte Culley ; in re Adams*, 47 Law J. Rep. Bankr. 97 ; Law Rep. 9 Ch. D. 307.

Meanwhile an application by Adams in the action of *Edenborough v. Adams* to set aside the judgment was dismissed with costs, and Culley's taxed costs of this application were 47*l.* 16*s.* 6*d.*

On the 17th of July, 1879, a second bankruptcy petition, grounded on the judgment, and presented by Griffin and Culley (Griffin having taken an assignment of the debt to himself from Culley) was dismissed with costs, on the ground that the proceeding was not *bona fide*, and that the debt had been bought up for purposes which were inequitable, vexatious and oppressive. See

*Ex parte Griffin ; in re Adams*, 48 Law J. Rep. Bankr. 107 ; Law Rep. 12 Ch. D. 480.

On the 2nd of December, 1879, an application to the Registrar, acting as Chief Judge, by J. Griffin that the judgment debt and the 47*l.* 16*s.* 6*d.*, being the amount of the taxed costs of Culley on the application of Adams to the Queen's Bench Division to set aside the judgment in *Edenborough v. Adams*, might be set off against the amount of costs coming

*In re Adams; ex parte Griffin, App.*

to Adams on the taxation of his costs under the Orders of the 1st day of April and the 17th day of July, 1879, was dismissed with costs, on the ground that costs at Common Law could not be set off against costs in Bankruptcy.

Griffin appealed.

*Sir H. Jackson and Mr. V. Williams*, for the appellant.—We do not claim to set off the judgment—

*Watson v. Mid Wales Railway Company*, 36 Law J. Rep. C.P. 285; Law Rep. 2 C.P. 593;

but we submit that we are entitled to have Culley's costs in the Queen's Bench Division set off against Adams's costs, when taxed, under the orders of the 1st of April and the 17th of July. The decision in

*Ex parte Griffin (ubi supra)* was not that the petition was such a fraud as vitiated our rights, but that the proceedings were simply a fraud on the Bankruptcy laws, and disentitled us to proceed in Bankruptcy.

In

*Archbold's Practice*, 13th ed., p. 640, it is stated that where there are cross-judgments in the same or different actions in the same or different Divisional Courts between parties substantially the same, whether for debts or damages and costs, or costs alone, the one may be set off against the other. The parties need not necessarily be exactly the same so long as they are substantially the same and their interests are the same—

*Mitchell v. Oldfield*, 4 Term Rep. 123;

*O'Connor v. Murphy*, 1 H. Black. 657;

*Nunez v. Modigliani*, 1 H. Black. 217.

Here Griffin, who is entitled to stand in Culley's place, should have the benefit of the order for costs obtained by Culley against Adams in the Queen's Bench Division.

[JAMES, L.J.—In

*Wright v. Mudie*, 1 Sim. & S. 266;

1 Law J. Rep. (o.s.) Chanc. 136, the Court of Chancery refused to allow the costs of a suit and of an action between the same parties to be set off against each other; and the Court of

Bankruptcy always follows the practice of the Court of Chancery in such matters.]

By the Rules of the Supreme Court of the 12th of August, 1875, rule 19, costs which a person is entitled to receive may now be set off against costs which he is liable to pay, when taxed.

[JAMES, L.J.—That rule only applies to proceedings in the High Court of Justice, and not to the Bankruptcy Court.]

Before the Judicature Act the Common Law Courts allowed costs in Equity to be set off against costs at Common Law—

*Hall v. Ody*, 2 Bos. & P. 28;

*Webber v. Nicholls*, 4 Bing. 17; 5 Law J. Rep. (o.s.) C.P. 19;

*Harrison v. Bainbridge*, 2 B. & C. 800; 4 D. & R. 363; 2 Law J. Rep. (o.s.) K.B. 171;

*Emden v. Darley*, 1 B. & P. N.R. 22; and costs in the Mayor's Court have also been set off against costs at Common Law—

*Emerson v. Lashley*, 2 H. Black. 253.

But it has been held that an application to set off a portion of a debt secured by a judgment at law against costs incurred by the dismissal of a petition presented in Bankruptcy must be made to the Bankruptcy Court—

*Woodruffe v. Wootton*, 4 Sc. 364; 6 Law J. Rep. C.P. 176.

We submit that the appellant would be entitled to this set-off at Common Law, and that he ought not to be deprived of that benefit merely because the application has to be made to this Court.

*Mr. Pollard*, for the respondent, was not called upon.

JAMES, L.J., said—It seems to me that the old Court of Chancery never made such an order as that now asked for, and that the Court of Bankruptcy, which has always followed the practice of the Court of Chancery, never made such an order. In *Hall v. Ody*, which was an application in the Court of Common Pleas to set off against the costs incurred in that Court the costs which had been obtained in an action in the Court of King's Bench between the same parties, Lord Eldon says, "Finding it to be the practice of this Court that an attorney shall not take his costs out of the fund which by his dili-

*In re Adams; ex parte Griffin, App.*

gence he has recovered for his client, where the opposite party is entitled to a set-off, it does not become me to say more than that I find it to be the settled practice with much surprise, since it stands in direct contradiction to the practice of every other Court as well as to the principles of justice. In the Court of Chancery the same parties are often concerned in many suits, and I never knew the idea entertained of arranging the funds until the respective attorneys were paid their costs." That was Lord Eldon's view; and in *Wright v. Mudie* the Vice-Chancellor (Sir John Leach) says, "It is clear upon the authorities that the practice of the Common Pleas, as stated in the case of *Hall v. Ody*, that the lien of the attorney for his costs is subject to the equitable claims of the parties as between themselves, is not adopted in the Court of King's Bench; and Lord Eldon, then Chief Judge of the Common Pleas, expressly states it to be contrary to the practice of the Court of Chancery." We have it, then, in distinct terms laid down that the old Court of Chancery would not direct the costs of a suit and of an action between the same parties to be set off against each other, and it seems the Court of Bankruptcy never has done so. We must, therefore, follow that which was the settled practice in the old Court of Chancery and in the Court of Bankruptcy, and not allow costs obtained in another Court to be set off against costs in this Court. And really it is not so much a question of set-off between the principals as between the attorneys, for all the costs are paid to the attorneys and not to the principals.

BRETT, L.J., and COTTON, L.J., concurred.

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Solicitors—J. C. E. Weigall, for appellant; P. Col-  
lings, for respondent.

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BACON, C.J. }

1879.

Dec. 15.

1880.

Jan. 12.

*In re HARRISON; ex parte  
HARRISON.*

*Court of Bankruptcy—Jurisdiction—  
Fraud on Creditors—13 Eliz. c. 5—Bank-  
ruptcy Act, 1869 (32 & 33 Vict. c. 71),  
s. 72.*

*Mortgages executed by the bankrupt more  
than twelve months before the adjudication  
were impeached by the trustee in the bank-  
ruptcy, and the County Court Judge directed  
certain issues to be tried by a jury. The  
jury found that the mortgages were executed  
with intent to defeat and delay creditors,  
and the County Court Judge ordered the  
deeds to be delivered up to be cancelled.*

*On appeal to the Chief Judge, the Court  
took the objection that as the deeds could  
not be impeached by virtue of the Bank-  
ruptcy Law, the Court of Bankruptcy had no  
jurisdiction, and discharged the order of the  
County Court Judge without costs.*

This was an appeal from the County  
Court at Hanley.

The debtor was adjudicated bankrupt on  
the 16th of June, 1874. More than twelve  
months before the date of the adjudica-  
tion the bankrupt had executed in favour  
of his son a memorandum of mortgage  
dated the 30th of April, 1873, to secure  
385*l.*, and an indenture of mortgage dated  
the 8th of May, 1873, to secure the fur-  
ther sum of 395*l.* These mortgages com-  
prised all the property which the bankrupt  
possessed. On the 27th of November,  
1878, the trustee applied in the bank-  
ruptcy to set aside these mortgages as  
fraudulent and void against the creditors,  
and the Registrar directed certain issues  
to be tried by a jury, and the jury returned  
a verdict that the mortgages were execu-  
ted by the bankrupt without consideration,  
and with intent to defeat or delay his credi-  
tors. On the 10th of July, 1879, the son,  
the mortgagee, applied to the Registrar for  
a new trial of the issues, and the trustee at  
the same time applied to have the deeds  
declared void, and cancelled and delivered  
up. The registrar refused to order a new  
trial, and made an order for the delivery  
up of the deeds. The mortgagee ap-  
pealed.

*In re Harrison; ex parte Harrison.*

There was no evidence that the mortgagees had objected to the jurisdiction of the Court of Bankruptcy before the Registrar.

*Mr. Robson*, for the appellant.—These mortgages were executed more than a year before the bankruptcy, and can only be impeached under 13 Eliz. c. 5, and not under the Bankruptcy Act—

*Allen v. Bonnett*, Law Rep. 5 Chanc. 577.

There was no evidence to go to the jury that the mortgages were fraudulent under the statute of Elizabeth. The Court can, therefore, disregard the finding of the jury—

*Ex parte Norton; in re Golden*, Law Rep. 16 Eq. 392;

*Ex parte Morgan; in re Simpson*, 45 Law J. Rep. Bankr. 36; Law Rep. 2 Ch. D. 72.

[THE CHIEF JUDGE stopped him, and said—What jurisdiction has the Court of Bankruptcy in the matter? In

*Re Yates; ex parte Brown*, 48 Law J. Rep. Bankr. 78; Law Rep. 11 Ch. D. 148,

James, L.J., says, "Questions of fraudulent preference and acts of bankruptcy are the very things that were intended to be dealt with by the Court of Bankruptcy. When the trustee's title is only the same that the bankrupt, but for his bankruptcy, would have had, the matter should be left to the ordinary tribunals, but when the trustee by the operation of the bankrupt laws claims by a higher and better title than the bankrupt, the matter is one which was intended to be dealt with by the Court of Bankruptcy." And again, in the same report he says, "It may be as well to repeat that when a deed or other transaction is impugned on the ground that it is void by the operation of the bankrupt law, and not on a ground that would have been available to the bankrupt himself, the case is pre-eminently one for the Court of Bankruptcy to decide, and not to leave to the ordinary tribunals." Do not those remarks shew that the Court of Bankruptcy had no jurisdiction in this case? The same rule was laid down in

*Ex parte Dickinson; in re Pollard*, 48

Law J. Rep. Bankr. 36; Law Rep. 8 Ch. D. 377.]

*Mr. E. O. Willis and Mr. Finlay Knight*, for the trustee.—If the deeds were a fraud on the creditors, the trustee may set them aside in the bankruptcy. The objection to the jurisdiction ought to have been taken before the County Court Judge—

*Ex parte Swinbanks; in re Shanks*, 48 Law J. Rep. Bankr. 120; Law Rep. 11 Ch. D. 525.

THE CHIEF JUDGE.—On the authority of the cases to which I have referred I must hold that the Court of Bankruptcy had no jurisdiction in the matter. The appeal must be allowed, and the order discharged, but as the appellant might have objected to the jurisdiction himself before the County Court Judge, it will be discharged without costs.

Solicitors—J. Burton, agents for T. Cooper, Congleton, for appellant; Llewellyn, Ackrill & Hammack, agents for Tennant, Faine & Jones, Hanley, for respondent.

BACON, C.J. } *In re GREAVES; ex parte*  
1880. } WHITTON.  
Feb. 25. }

*Practice—Appeal from County Court—Time for Appealing—Bankruptcy Rules, 1870, rule 143.*

*The twenty-one days within which an appeal from the decision of a County Court Judge is to be entered, are to be reckoned from the date when the order is pronounced, and not from the date when it is settled and signed.*

This was an appeal from an order of the Judge of the Sheffield County Court, whereby the Judge gave the appellant leave to take off the proceedings in the bankruptcy his proof of debt, and to file a new proof of debt, subject to certain conditions. The appellant appealed, because he was dissatisfied with the conditions.

The order appealed from was pronounced on the 30th of October, 1879, but not signed and sealed till the 8th of

*In re Greaves; ex parte Whitton.*

December, 1879. The Registrar dated the order the 30th of October.

On the 9th of December the appellant applied to enter his appeal, but the Registrar refused to set it down, and the Chief Judge declined to direct him to do so. Thereupon, the appellant applied to the Court of Appeal, which gave the appellant special leave to serve notice of his appeal to the Court of the Chief Judge for the 19th of January, 1880, but expressly declared that the question, whether the appeal was or was not in time, was to be left open for the decision of the Chief Judge.

*Mr. De Gex and Mr. Robson*, for the respondent.—We take the preliminary objection (which is left open by the order of the Court of Appeal) that by rule 143 the appeal is too late, not having been brought within twenty-one days from the date when the order was pronounced—

*Ex parte The Dudley and West Bromwich Banking Company*, 3 De Gex, J. & S. 456; 32 Law J. Rep. Bankr. 68;

*Ex parte Hookey*, 4 De Gex, F. & J. 456;

*Ex parte Hinton*, 44 Law J. Rep. Bankr. 36; Law Rep. 19 Eq. 266.

In

*In re Sendall; ex parte Oochrans*, 48 Law J. Rep. Bankr. 31; Law Rep. 9 Ch. D. 698,

the order was dated on the day when it was settled, and was therefore held to be pronounced on that date. Here the order was properly dated by the Registrar on the day when it was pronounced.

Order LVII. rule 15 of the Rules of Court, 1875, does not apply to the Court of Bankruptcy.

*Mr. Hemming and Mr. West*, for the appellant.—The twenty-one days ought to be calculated from the date when the order is drawn up and signed; otherwise the appellant cannot tell what his notice of appeal is to be, or set out from what he appeals. In any case it was the duty of the Registrar to date the order on the day when it was settled, as in

*In re Sendall; ex parte Oochrans (ubi supra)*,

and we ought not to be prejudiced by the mistake of the Registrar in dating the order wrongly. In

*Ex parte Hinton (ubi supra)*

the order, though dated subsequently, stated that the application was made and disposed of on an earlier date.

*Ex parte Hookey (ubi supra)*

and

*Ex parte The Dudley and West Bromwich Banking Company (ubi supra)*,

were decisions under the Bankruptcy Act of 1849 (12 & 13 Vict. c. 106. sect. 12).

BACON, C.J.—This case is governed by the settled practice of the Court of Bankruptcy, and is not at all affected by the Orders under the Judicature Act. The judgment delivered by Lord Westbury in *Ex parte Hookey* relates as well to the practice of the Court as to the reasons for that practice. When the Court has pronounced its decision, twenty-one days are given from that date, for the purpose of appealing. If I were to hold that they are to be reckoned from any other period I should be introducing a new and inconvenient practice, and one which has never obtained in the Court of Bankruptcy. There was no reason in this case why the appellant should have waited until the order was drawn up. He had heard the order, the substance and effect of it, and he might have given notice of appeal next day. The case, as it comes before me from the Lords Justices, is clear enough. They thought it right the appeal should be entered, and that it should take its fate. I find a decision of an experienced Judge in Bankruptcy dealing with the reason and policy of the rule, and I cannot go beyond it without overruling or disregarding that judgment, which I have no inclination to do. I hold therefore that I have no power of hearing this appeal, which must be dismissed with costs.

Solicitors—Henry A. Maude, agent for Webster & Styring, Sheffield, for appellant; Pattison, Wigg & Co., agents for Broomhead, Wightman & Nicholson, Sheffield, for respondent.

[IN THE HOUSE OF LORDS.]

1880. } BANCO DE PORTUGAL v.  
March 16, 19. } WADDELL.

*Bankruptcy Act, 1869, s. 37—Double Proof—Firms composed of the same Members—Administrations in two Countries—Admission of Evidence not before Court below.*

Two persons carried on business, under one firm, as wine exporters in Portugal, and under another as wine merchants in London. Bills were drawn by the Portuguese firm on, and accepted by the English firm. The English firm became bankrupt, and before the adjudication proceedings in insolvency were taken in Portugal, under which the property there was administered and divided exclusively among the Portuguese creditors. One of these creditors, who had received a dividend on bills drawn by the Portuguese firm, then sought to prove in the English bankruptcy in respect of the same bills against the English firm as acceptors.—

Held, that he could only do so on condition of bringing into account the dividend received in Portugal.

The words, "in whole or in part composed of the same individuals," in section 37 of the Bankruptcy Act, 1869, do not apply to the case of two firms consisting entirely of the same individuals, but to the case where all the members of one firm form part of another firm.

Selkrig v. Davies (2 Dow. 230; 2 Rose, 97, 291) and Ex parte Wilson (41 Law J. Rep. Bankr. 46; Law Rep. 7 Chanc. 490) followed.

Admission refused of evidence which had not been used before the Court below. Observations of LORD LYNDEURST in Attwood v. Small (6 Cl. & F. 232) approved.

This was an appeal from a judgment of the Court of Appeal, affirming a decision of Mr. Registrar Murray, sitting as Chief Judge in Bankruptcy. The case is reported in the Court below—48 Law J. Rep. Bankr. 73; Law Rep. 11 Ch. D. 317.

J. K. Hooper and J. K. Hooper, the younger, carried on business at Oporto as exporters of wine, under the firm of Hooper Brothers, and in London as wine

merchants, under the firm of Richard Hooper & Sons.

In December, 1877, they presented a petition for liquidation in London, and were shortly after declared insolvent in Portugal, and administrators were appointed there. The English creditors subsequently resolved on liquidation by arrangement, and appointed the respondent trustee.

The administrators in Portugal took possession of the property there, and divided it among the Portuguese creditors. The Banco de Portugal, which had received a dividend in Portugal upon bills drawn in the name of Hooper Brothers, and accepted in that of Richard Hooper & Sons, applied to prove in the English liquidation upon the acceptances. The proof was admitted by Mr. Registrar Murray, upon condition that the Portuguese dividend was brought into account before any dividend was received in the English liquidation.

This decision was affirmed by the Court of Appeal.

The bank appealed.

Mr. Cookson and Mr. S. Woolf, for the appellants.—This case falls within section 37 of the Bankruptcy Act, 1869, and the bank is entitled to receive dividends in full on their debt, subject only to this, that they are not to receive altogether more than 20s. in the pound.

The section evidently contemplates two firms composed identically of the same members, since it speaks of "firms in whole or in part composed of the same individuals."

[LORD BLACKBURN.—It may mean where the whole of one firm are members of another, but not *vice versa*. LORD SELBORNE.—The section contemplates several bankruptcies.]

It has been decided that it admits proofs by joint and separate creditors on joint and separate estates, though there is but one bankruptcy and one vesting in one trustee—

*Ebbs v. Boulnois*, 44 Law J. Rep. Chanc. 691; Law Rep. 10 Chanc. 479;

*Lacey v. Hill*, 42 Law J. Rep. Chanc. 86; Law Rep. 8 Chanc. 441,

*Banco de Portugal v. Waddell, H.L.*

The distinction between joint and separate estates administered by one trustee is not greater than that between the estate administered by the syndic in Portugal and that administered by the trustee in England. There is here a separate locality, a separate vesting, and a separate trustee.

Under the old law, before the Bankruptcy Act, 1861, double proof was not allowed, except where there were distinct trades. Even then, if one firm consisted of one individual, and the other of several including that one, there could not be distinct proofs. This exception was extended by

*Goldsmid v. Cazenove*, 7 H.L. Cas.

785; 29 Law J. Rep. Bankr. 17, to the case where only part of one firm was the same as part of another. Yet, if the creditor on a bill had no notice of the identity, it was held in

*Ex parte Adam*, 2 Rose, 36, that he could prove against both drawer and acceptor.

It was in that state of the law, when notice was considered of importance, that

*Selkirk v. Davies*, 2 Dow. 230; 2 Rose, 97, 291,

which seems to govern this case, was decided in the House of Lords, but the rule as to notice was abandoned later.

The Bankruptcy Act, 1861, sect. 152, altered the law in the direction contended for, by allowing double proof in all cases where there were separate trades carried on by the two firms.

*Ex parte Wilson (ubi supra)*, by which the Court of Appeal have held themselves bound here, is a decision on that section, and, if well decided, which it is submitted it was not, does not apply to this case, which is governed by the Bankruptcy Act, 1869.

*Ex parte Honey*, 41 Law J. Rep. Bankr. 9; Law Rep. 7 Chanc. 178, followed in

*Ex parte Stone*, 42 Law J. Rep. Bankr. 73; Law Rep. 8 Chanc. 914,

shews the effect of the alterations in the Bankruptcy Act, 1869. The words in the Act of 1861, "distinct estates to be

wound up in bankruptcy," on which the decision in

*Ex parte Wilson (ubi supra)* depends are not in the Act of 1869.

It has been held that, if an English creditor by superior diligence gets possession of assets abroad which would not be available in the English bankruptcy, he need not bring them in for the benefit of the other creditors—

*Cockerell v. Dickens*, 3 Moo. P.C. 98.

A creditor cannot be required to bring into account anything which he has acquired by a title superior to that of the trustee—

*Selkirk v. Davies (ubi supra)*;

*Ex parte Postmaster-General; in re Bonham*, 48 Law J. Rep. Bankr. 84; Law Rep. 10 Ch. D. 595.

Here the Portuguese assets never vested in the trustee at all.

As to the practice of the House of Lords with regard to the admission of evidence not used in the Court below, see *Maccabe v. Hussey*, 2 Dow. & Cl.

440;

*Attwood v. Small*, 6 Cl. & F. 232;

*Noel v. Noel*, 12 Price, 214.

*Mr. De Gez, Mr. Benjamin and Mr. McCall*, for the respondent, were not called upon.

THE LORD CHANCELLOR (EARL CAIRNS).—In this case I think your Lordships will not desire to hear the counsel for the respondent, and that you all share the opinion, which I certainly entertain, that the decision of the Court of Appeal was in all respects correct. So far as the Court of Appeal was concerned it had, as it seems to me, virtually decided the same question in the case of *Ex parte Wilson* which has been referred to in the course of the argument, but as this House is not bound by that decision, and as the appellants have challenged, to a certain extent, the principles upon which that case was decided, it is necessary that I should ask your Lordships to look, for a few moments, at the facts of the present case, and consider the law applicable to those facts.

The facts of the case, so far as it is necessary to mention them, appear to be these. There are two persons who carry

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on business in London as wine merchants, under the style of Hooper & Sons, and the same two persons carry on business at Oporto as Hooper Brothers, the business at Oporto being the purchasing of one particular kind of wine from the producers in order that it may be sent to London and sold in the general business of the firm in London. They keep, as obviously it would be convenient to do, separate books, and in those books a commission is charged as between one firm and the other, but it does not appear that the house at Oporto has any capital whatever for carrying on the business there, beyond that which is provided through the medium of the negotiation of bills of exchange, by the acceptances of the house in London. Under those circumstances for the purpose of paying for certain port wine purchased in Portugal, bills of exchange are drawn by the Oporto house, by these two merchants trading at Oporto under the name of Hooper Brothers, upon themselves trading in London under the name of Hooper & Sons, and the present appellants are the holders of some of those bills. The two merchants trading in London under the name of Hooper & Sons present a petition for the liquidation of their affairs; ultimately an order is made upon that petition, and they are to be looked upon now as liquidating upon the principles of the bankruptcy law, and according to that law the order made upon that liquidation will date back, in its effect, to the time of presenting the petition, subject of course to any right that there may be on the part of particular persons to exempt certain specified and protected dealings from the operation of that retrospective action of the law. After that petition was presented here, proceedings were taken and a bankruptcy was declared in Portugal, against the same two persons trading there, as I have said, as Hooper Brothers, and there was a *cessio bonorum*, under which *cessio bonorum* the present appellants have gone in and proved their debt, that is to say, against those two persons trading at Oporto, as the drawers of the bills, and they have received dividends which, for the purpose of the argument, I will take

to amount to 8s. in the pound; and then these holders of the bills, the appellants, come to this country, and say to those who are liquidating the affairs of the traders in this country, "We demand to prove as against the estate here, for the reason that the traders here were the acceptors of those bills of exchange."

Now, altogether apart from statute, so far as I know, there never was a time in the administration of the bankruptcy law at which the holders of bills of exchange would not have been entitled to prove here against an estate so being administered; the only question would be the terms upon which they would be admitted to prove. I wish to look at the case without regard to the Act of 1861, or the Act of 1869; and I repeat, as I understand the law, it would at all times have been perfectly competent to the holders of those bills, having received under the bankruptcy administration in Portugal a certain dividend, to come and prove upon the bankruptcy administration in England, if a bankruptcy administration was taking place here, and the only question would be the terms upon which they should prove. And that right would have existed without introducing into the case the element of the same persons being both drawers and acceptors of the bills of exchange. If the debtors had been liable only in one capacity there would have been that right of proof in the creditors after the receipt of the dividend in Portugal. But upon what terms would that right have existed? The terms are laid down by a decision of your Lordships' House in the case of *Selkirk v. Davies*; the terms are perfectly clear that a person who after having proved under a foreign bankruptcy, claims to prove in a bankruptcy of the same debtors in England he may do so; but he must do so upon the terms of bringing in, for the purpose of dividend, the sum which he has received abroad. As was said by Lord Eldon, "It has been decided that a person cannot come in under an English commission without bringing into the common fund what he has received abroad;" and Lord Eldon goes on to point out, what is obviously the case, that a creditor, because he

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happened personally to be in England, would not be obliged to bring this sum into the common fund—he might keep it if he liked—he might ignore the English bankruptcy altogether if he pleased; but if he did not ignore it, if he sought to take advantage of it, if he sought to have some benefit from it, then, on the principle that he who asks for equity must do equity, he must bring into the common fund that which he had already received in respect of the obligations of the same debtors. That is the case as the matter would have stood apart from the statutes. Now, have the statutes made any difference in the case? The statutes create no new right in the way of giving a right of proof, but they profess to take out of the way a difficulty which existed in certain cases against double proof, and to say that certain things shall not prevent double proof; but as I read the statutes—and I will take the one which the appellants think most favourable to themselves, the statute of 1869—I cannot see that it has any application whatever to a case of two bankruptcies, either in the same country or in different countries, against the same identical individual or individuals. The statute supposes a case where there are two contracts and also two firms, or an individual and a firm. I do not in the least see the difficulty which has been felt with regard to the use of the words “in whole.” What I take that to mean is this—the statute supposes a case where, we will say, A., B. and C. are trading as one firm, and there is another firm, in which the whole of those members are found, consisting of A., B., C., D., E., F., that is a case which is pointed at by the words “in whole.” But there may be another case: A., B. and C. may be trading as one firm, and the whole of those may not be found in the other firm, only two of them or only one of them may be found in the other firm, that would come under the words “in part.” There may be, thirdly, the case of a sole trader, who is found also trading in a firm with other persons. But what the statute says is this: “If any bankrupt is at the date of the order of adjudication liable in respect of distinct contracts as member

of two or more distinct firms, or as a sole contractor, and also as member of a firm, the circumstance that such firms are in whole or in part composed of the same individuals, or that the sole contractor is also one of the joint contractors, shall not prevent proof in respect of such contracts against the properties respectively liable under such contracts.” That supposes a case which it seems to me is perfectly foreign to the present. This is simply the case of one bankrupt firm. It happens to be two persons trading together in Portugal and in England, but it is just the same case as if it were one person trading in Portugal, and the same person trading in England; the two persons do not constitute different firms because they trade in Portugal and also in England; and there is not that diversity which is necessary to bring the section of the Act of Parliament which I have just read into operation. The case, therefore, stands as it would do altogether regardless of the statute; and that was the decision of the Lords Justices in the case of *Ea parte Wilson* under the former statute of 1861.

The result, therefore, is this, that the appellants are perfectly entitled to prove under the English bankruptcy; but if they elect to do so they must, as was said in the case of *Selkirk v. Davies*, bring into the common fund what they have received abroad, which is exactly the effect of the order made by the learned Registrar, and made by the Court of Appeal. I therefore move your Lordships that the appeal be dismissed with costs.

LORD SELBORNE.—I am entirely of the same opinion, and with respect to the principal question, I so entirely concur in the judgment of the Court below and in the reasons assigned for it by the Lords Justices and by the Lord Chancellor, as to think it unnecessary to add anything.

The other point argued by the appellants' counsel was that the title of the appellant bankers to the goods received by them in Portugal was prior in time and paramount in law to the title of the trustee under the English liquidation, and that the appellants were therefore

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entitled to prove for the residue of their debt, after deducting what they had so received, in the same way only as if it had been a payment on account, made by the debtors before the presentation of any petition for liquidation. This, however, in my judgment is not so. The Portuguese assets were, by the law of England, which we have to administer (and, I may add, in accordance with the general principles of private international law as to moveable property), subject to and bound by the English liquidation, except so far as the local law of Portugal might have intercepted any portion of them while within its jurisdiction. Every creditor coming in to prove under, and to take the benefit of the English liquidation, must do so on the terms of the English law of bankruptcy; he cannot be permitted to approbate and reprobate, to claim the benefit of that law, and at the same time insist on retaining, as against it, any preferential right inconsistent with the equality of distribution intended by that law, which he may have obtained either by the use of legal process in a foreign country or otherwise. As against the appellants, so coming in to prove, and not being within any of the savings contained in the 94th section of the Act of 1869, it is unimportant that the presentation of the petition in December, 1877, was not *per se* a *cessio bonorum*, because (subject to the exceptions of the 94th section) the Act makes the title of the trustee relate back to the time when the petition was presented which was before the time when the title of the Portuguese Court to administer the Portuguese assets is said to have accrued. The appellants cannot come in and prove and take dividends out of the English assets, with the full benefit of the relation back of the title of the trustee to the date of the petition, and at the same time set up against that title a later act of a Portuguese Court, for the purpose of enabling themselves to refuse credit for property belonging to the estate, received by them in Portugal after the date of the petition, through the action of that Court. I must not, however, be supposed to think that it would really have made any

difference if the action of the Portuguese Court had been earlier, nothing having been received by the appellants till long after the title of the English trustee had accrued.

I think it worth while to add a few words on the subject of the appellants' endeavour to introduce upon this appeal evidence which was neither used in nor offered to the Court below. Some cases were referred to, one of which, *Maccabe v. Hussey*, has no bearing upon the point at all. In that case evidence had been rejected in the Court below, the question of the propriety of the rejection of that evidence was raised by the appeal, and the appellants' counsel insisted that the House ought not to look at the rejected evidence to see whether, if it had been admitted, it would have made any difference or not, but that if it held it to have been improperly rejected it should simply send the case back. The House very properly took a different view of the matter, but it is quite obvious that that had no bearing upon the general question. With regard to the general question, Lord Lyndhurst, in the case of *Attwood v. Small*, following Lord Brougham, who used the words which were cited from that case, put the matter upon so proper a footing that it appears to me worth while to remind your Lordships of what he said—"With respect to the cases that have been cited, it does not appear to me that they go far to decide the present question." The question there was whether the answer in the cause which had not been read or entered as read in the Court below, was to be read in this House. "The case of *Noel v. Noel* was a mere question of construction of a will, there was no dispute as to the facts, the will having referred to a settlement, it appeared to the noble lords who decided that case, that it was impossible properly to determine the construction of the will without looking into the settlement. There was no dispute that there was such a settlement, no dispute as to a question of fact; it would have been idle therefore to have sent it back to the Court below to hear farther evidence and to receive the settlement; the

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Court therefore called for the settlement." Then he says something more upon the state of things there. It is quite obvious that it was one of the common cases in which the parties on all sides, as well as the House, saw that it would be merely occasioning a most vexatious and improper expense, ending in no good to anybody, to object to the House looking at the document. Lord Lyndhurst goes on to say—"It is quite obvious, therefore, that it was a mere question as to the construction of the instrument, and it did not turn at all on a disputed fact. With respect to the other case which has been cited from *Brown's Parliamentary Cases*" (which was a case in 1717), "the facts are so obscurely stated that it is quite impossible to place any sufficient reliance upon it. I think, therefore, the general rule ought to prevail in this case, namely, that as this evidence was not tendered in the Court below it ought not to be offered before the Appellate Tribunal." And I must add that in the whole of my experience, which extends over a considerable period of time, such a thing never has happened as that this House has allowed any evidence to be introduced which was not used in the Court below.

LORD BLACKBURN.—I am also of opinion that in this case the judgment below is quite right, and that it is not necessary to hear the respondent. I will say nothing upon the question as to what would have been the case supposing section 37 of the Act of 1869 or section 152 of the former Act had not been passed, except that I quite agree with the reasons that have been given by the Lord Chancellor for holding that, supposing the proceedings had been under the bankruptcy law before those Acts came into operation, the proof here would have been properly made, conditional, however, upon this, that before any dividend was received upon it there should be allowance made for all that had actually been received. But then it is said that section 37 of the Act of 1869, which extends the effect and somewhat alters the language of section 152 of the foregoing Act, makes

a difference. That I cannot agree to. I think that section 37 properly construed does not apply to this case at all. It is to be remembered what was the principal object with which that section and section 152 of the Act of 1861 were enacted, and what it was wished to remedy. At Common Law, when no bankruptcy intervened, if a man had a claim for 100*l.* arising out of a contract in which two firms or two sets of persons were concerned, one individual being common to both the firms, as, for instance, if a firm consisting of A. and B. drew on a firm consisting of B. & C., there is no doubt whatever that the man would have had his action against A. and B. as drawers, to recover his 100*l.*, and his action against B. & C. as acceptors; and if he recovered judgment upon either one or other of those, he could have levied his execution against the estates of both the contracting parties, and the fact that one of the contracting parties who had contracted, say as acceptor of the bill, was also a person who had contracted as drawer for the same sum of moneys, would have had no effect upon his right to issue execution against the estate and property of the firm of B. & C. who had accepted the bill, as well as against the estate of the firm A. & B., who had drawn the bill. Such would have been the effect at Common Law, but when bankruptcy intervened, there was introduced for motives of convenience, I believe, a rule of bankruptcy which became established, and completely established as the law, so that it could not be altered without the intervention of the Legislature by which, where there were two contracts for the same matter, as I have supposed in the case of A. and B. and B. and C., where there was one common partner in both firms, though there might be proof against each of the estates, yet there was not to be a dividend received from each of those estates, the creditor must elect which he would go against. That seemed always to me to be a very great hardship and anomaly, which should not have been introduced originally, and the Legislature has by two successive Acts partially removed that

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which seemed to me to be an injustice, but this has not been done entirely. Where there are not two separate firms the old rule would still remain untouched that the creditor must elect which estate he would go against; in all other cases those two sections of the Acts of 1861 and 1869 would apply. As I say, those sections were intended to take away that anomaly and injustice to which I have referred, and it was for that purpose alone that they were intended.

Now the first Act (the Act of 1861), which applied only to the case of bills of exchange and notes, provided that "if any debtor should at the time of adjudication be liable upon any bill of exchange or promissory note, in respect of distinct contracts, as member of two or more firms carrying on separate and distinct trades, and having distinct estates to be wound up in bankruptcy, or as a sole trader, and also as the member of a firm, the circumstance that such firms are in whole or in part composed of the same individuals, or that the sole contractor is also one of the joint contractors, shall not prevent proof and receipt of dividends in respect of such distinct contracts against the estates respectively liable upon such contracts." That was the section which had to be construed in *Ex parte Wilson*, and there it was very satisfactorily pointed out, as it seems to me, that though there were two firms, though there were two distinct names for the firms, and though there were two distinct businesses, yet if the fact was that all the members of the firms were the same, there was no need for the section at all, there was no double proof to which the creditor would have been entitled if it had not been for the rule to which I am referring. It would have been one estate to be wound up in bankruptcy, one estate which was to be administered, and one proof that was to be made; and there was nothing there to hinder, and nothing to take away. By subsequent legislation it was extended from bills of exchange and notes, and made to apply to all cases of contracts where debtors were liable, in respect of distinct contracts, as members of two or

more distinct firms; and then the words, "carrying on separate and distinct trades, and having distinct estates to be wound up in bankruptcy," are dropped out, and it goes on to say, "or as a sole contractor and also as a member of a firm, the circumstance that such firms are in whole or in part composed of the same individuals, or that the sole contractor is also one of the joint contractors shall not prevent proofs," &c. The words to which I have referred, in the earlier part of the section, evidently under the idea that the words were superfluous, and that brevity is of more importance than clearness, which is a common error on the part of draftsmen, were struck out. Then it goes on, "shall not prevent proof in respect of such contracts." The former section ran, "shall not prevent proof and receipt of dividend in respect of such distinct contracts against the estates respectively liable upon such contracts." Under the same mistaken idea that it is better to be short and obscure than long and clear, the words, "and receipt of dividend," and the word, "distinct," are struck out, and the section of the Act of 1869 reads, "shall not prevent proof in respect of such contracts, against the properties respectively liable upon such contracts."

Now the only argument that it ever seemed to me could be urged on that section was, that the words to which I have referred having been struck out, the words, "such firms are in whole or in part composed of the same individuals," applied to the case where there are two distinct firms consisting entirely of the same identical individuals, and I think that the words, "in the whole," would be capable of bearing that meaning if the context did not preclude the possibility of their bearing it. But I also think those words are capable of applying—and from the context I think that they do apply—to a case where the firms are not throughout composed of identically the same members, but where one of them embraces the whole of the others—to make one's meaning clearer, say, that one firm is A., B. and C., and the other is A. and B. There I

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think you may say that the firm A. and B., "in the whole," formed part of the firm A., B. and C. I think the words apply to that case, and would not apply to a case where the firms were identical. That is a verbal criticism, rather than anything else, and I go more upon the ground which Lord Justice Bramwell very clearly puts, that this is to take away a prevention, a limitation. That is to say, whereas formerly there would have been a right on the part of a creditor to come and say, "I will prove against C. for the debt which he has contracted, and I will come upon C.'s estate, and I will prove against A.'s estate, for the contract which A. entered into;" and whereas the rule of bankruptcy to which I have referred to said, "though it chances that B. is common to each of those contracts, though B. is a contractor with A. in one contract, and B. is a contractor with C. in the other contract, yet you shall not come upon the estate of both A. and C. You must elect which you will take." The Legislature by these enactments said, "The fact that the firms with whom you have contracted have a partner in common, or are in whole or in part in common, shall no longer prevent you proving against both." But in the case where they were all identical, there was nothing to prevent, yet though they were all identical, the creditor could not have had the right to prove more than once. It could not be, because they had contracted as drawers, and had also contracted as acceptors, that therefore the creditor was to prove twice for the amount of his bill. He could prove against the same individuals on their becoming bankrupts, and he could prove against them once, and once only, so that there was really nothing to prevent.

It was argued, more perhaps upon the other point of the case than on this, that the proof in the Court of Portugal was to be considered as a separate and distinct proof. I could hardly follow that argument. If it was good for anything, it was making out the bankrupts to be distinct persons, though they were not distinct persons. I cannot follow that argument, or admit that it is a good

argument in law. It seems to me, as I said before, for reasons which I do not repeat, but which the Lord Chancellor has fully expressed, that the Court of Bankruptcy in England had the right to administer all the personal property of these bankrupts, wherever that personal property was, whether in Portugal or in England; that when a Portuguese subject in any way got hold of part of that property, under the Portuguese law he was entitled to hold it; but when he had so got hold of part of the property, and he came to England to take advantage of the proceedings under the Bankruptcy Act, he could only do so upon appropriating that which he had received under the Portuguese law in payment of the dividends, and taking no dividends until that sum was exhausted. That is what was held to be the right thing to do in *Ex parte Wilson*, and in the Court below in this case; and, as it seems to me, that is the right thing to do. I am therefore entirely of opinion that the appeal should be dismissed with costs.

*Order appealed against affirmed, and appeal dismissed with costs.*

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Solicitors—Michael Abrahams & Roffey, for appellants; Loxley & Morley, for respondent.

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## [IN THE COURT OF APPEAL.]

JAMES, L.J.  
BAGGALLAY, L.J. } *Ex parte* SIDEBOTHAM;  
BRAMWELL, L.J. } *in re* SIDEBOTHAM.  
1880.  
May 13, 14.

*Bankruptcy—Comptroller's Report to the Court—Locus standi of Bankrupt and Creditor to appeal from Order or Refusal of Judge on that Report—Person aggrieved—Bankruptcy Act, 1869 (32 & 33 Vict. c. 71), ss. 20, 55, 56, 57, 71—Bankruptcy Rules, 1870, r. 251.*

*Where the Comptroller in Bankruptcy has made a report to the Court, pursuant to the 57th section of the Bankruptcy Act, 1869, and the 251st of the Bankruptcy Rules, in reference to the conduct of the trustee, neither the bankrupt, nor any of his creditors, has any locus standi as a "person aggrieved" to appeal from a refusal of the Court to make an order on that report. The Comptroller alone can appeal.*

*But if the trustee has been guilty of any misfeasance, the bankrupt, or any of his creditors, may apply to the Court, under section 20; and, if dissatisfied with the order made by the Court, may then appeal against it.*

*Ex parte Ditton; in re Woods (Law Rep. 11 Ch. D. 56), explained.*

Nathan Sidebotham and James March, carrying on business in partnership at Ashton-under-Lyne, as the Barnfield Iron Works Company, were adjudicated bankrupts on the 21st of November, 1878.

The Comptroller in Bankruptcy, on the 6th of March, 1879, made a report to the County Court at Manchester, to which Court the bankruptcy proceedings had been transferred, stating, among other things, that complaints had been made as to the conduct of the trustee in bankruptcy; that upon examination of those complaints, he had required the trustee to answer certain requisitions, and to make good to the bankrupt's estate a sum of 1,253*l.*, which, in the opinion of the Comptroller, had been lost to that estate by the misfeasance, neglect or omission of the trustee; that the trustee had failed to comply with the requisitions, or to pay the sum, or to make any satisfactory

explanation. The debts of the bankrupts amounted to 2,200*l.* The trustee had realised assets to the amount of 1,200*l.* The County Court Judge, upon hearing the report, refused to make any order with respect to the sum of 1,253*l.*

The Comptroller did not appeal from this refusal, but Sidebotham brought an appeal to the Chief Judge. The bankrupt had not obtained his order of discharge.

This appeal was heard on the 4th and 5th of August, 1879, when the Chief Judge ordered the trustee to call a meeting of creditors, to consider the report of the Comptroller, and the matters arising therefrom, and for passing such resolutions in relation thereto as the meeting might think fit, including the question of the removal of the trustee and committee of inspection, and the appointment of an additional or new trustee and committee, and taking such further steps, &c. . . . And the further hearing of the appeal was postponed.

A meeting of the creditors was subsequently held on the 14th of November, 1879, when a resolution was passed by a majority in value of the creditors then present, that the meeting, having considered the report of the Comptroller, was of opinion that the conclusions drawn by him were justified, and desired to express their entire satisfaction with that report, and required the trustee to submit to the report, and to bring in and pay to the creditors of the estate the money required. Other resolutions were passed removing the trustee.

The appeal came on for further hearing on the 15th of December, 1879.

*Mr. E. Cooper Willis*, for the appellant.

*Mr. Winslow* and *Mr. S. Taylor*, for the trustee.

*Mr. Abraham*, for the Comptroller.

The Chief Judge dismissed the appeal, on the ground that the bankrupt had no *locus standi* to appeal.

From this decision the bankrupt Sidebotham appealed.

*Mr. Ambrose* and *Mr. E. Cooper Willis* (on May 13), for the appellant, contended

*Ex parte Sidebotham; in re Sidebotham.*

that he was a "person aggrieved," within the meaning of the 71st section, by the refusal of the County Court Judge. The payment of 1,250*l.* by the trustee would have enabled the bankrupt's estate to pay a dividend of more than 10*s.* in the pound, and the bankrupt would have been entitled to his discharge; but if not a "person aggrieved," within that section, he had a right under section 20 to apply to the Court (1).

(1) Section 20 provides that "the bankrupt, or any creditor, debtor or other person aggrieved by any act of the trustee, may apply to the Court, and the Court may confirm, reverse or modify the act complained of, and make such order in the premises as it thinks just."

Section 55 provides that "The trustee having had his quarterly statement of assets audited by the committee of inspection, shall, within the prescribed time, forward the certified statement in the prescribed form to an officer to be called the Comptroller in Bankruptcy, and if he fail to do so he shall be deemed guilty of a contempt of Court, to be punishable accordingly."

Section 56. "Every trustee of a bankrupt shall, from time to time, as may be prescribed, and not less than once in every year during the bankruptcy, transmit to the Comptroller a statement, shewing the proceedings in such bankruptcy up to the date of the statement containing the prescribed particulars and made out in the prescribed form; and any trustee failing to transmit accounts in compliance with this section, shall be deemed guilty of a contempt of Court, and be punishable accordingly."

Section 57. "The Comptroller shall examine the statements transmitted to him, and shall call the trustee to account for any misfeasance, neglect or omission which may appear on such statements, and may require the trustee to make good any loss the estate of the bankrupt may have sustained by such misfeasance, neglect or omission. If the trustee fail to comply with such requisition of the Comptroller, the Comptroller may report the same to the Court; and the Court, after hearing the explanation, if any, of the trustee, shall make such order in the premises as it thinks just."

Rule 251. "The Comptroller shall take cognizance of the conduct of trustees, and in the event of any trustee not faithfully performing his duties, and duly observing all the requirements imposed on him by statute, rules or otherwise, relative to the performance of his duties, or in the event of any complaint being made to the Comptroller by any creditor in regard thereto, he shall inquire into the same, and if not satisfied with the explanation given, he shall report thereon to the Court, which, after hearing the trustee, may remove him from his office, or otherwise make such order in the matter as the justice of the case may require."

*Mr. Winslow and Mr. S. Taylor*, for the trustee. — An uncertificated bankrupt could not, under the old bankruptcy law, petition for an account against his assignees, without alleging that there would be a surplus after paying his creditors in full—

*Ex parte Ryley*, 4 Deac. & C. 50, and there has been no alteration made by the present law. The case of

*Ex parte Sheffield; in re Austin*, Law Rep. 10 Ch. D. 434, shews that an undischarged bankrupt has no interest in the surplus.

The appellant here has no interest nor grievance, for he gets his discharge if he pays 10*s.* in the pound. He has no right to appeal on these proceedings.

Power is given to the Comptroller alone to do certain things. He has called on the trustee to make good a loss. If the Comptroller had remained quiescent, no other person could have made a report or interposed. No other person is authorised or empowered to act except the Comptroller.

The only rule on this point is the 251st, in which creditors are mentioned, but the bankrupt is not.

Admitting that he could, under section 20, make an original application, he cannot appeal on the present. He is no party to the original order.

[JAMES, L.J., referred to—

*Ex parte Learoyd; in re Foulds*, 48 Law J. Rep. Bankr. 17; Law Rep. 10 Ch. D. 3;

*Ex parte Ellis*, 45 Law J. Rep. Bankr. 64, 159; Law Rep. 2 Ch. D. 229, 797.]

Suppose the Comptroller to be satisfied with the decision of the County Court Judge, although he is the only person to act, is it possible that the bankrupt, or any other person, for the purpose of vexation, can, in spite of the Comptroller, appeal against the decision, or can the Comptroller be compelled to appeal?

*Mr. Ambrose*, in reply.—If the Comptroller does not choose to appeal, there is no reason why some one else should not.

*Ex parte Ryley (ubi supra)* has no application.

[JAMES, L.J.—The question is not whe-

*Ex parte Sidebotham*; in *re Sidebotham*.

ther he could have made an original application, but whether he can appeal.]

The case of

*Ex parte Walters*; in *re Webb*, 45 Law J. Rep. Bankr. 105; Law Rep. 2 Ch. D. 326,

shews that persons who did not appear in the original proceedings were yet entitled to appeal against the order; and it would appear from the case of

*Ex parte Ditton*; in *re Woods*, Law Rep. 11 Ch. D. 56,

that if the appellant there had been a creditor, i.e. had proved his debt, he would have been allowed to appeal.

[JAMES, L.J.—We must take time to consider our judgment. It is an important question what limits are to be imposed on the term "person aggrieved" in section 71.]

JAMES, L.J. (on May 14).—Since this case was argued yesterday we have had the opportunity of considering it, and have arrived at the conclusion that the preliminary objection must prevail.

When we read the several clauses of the Bankruptcy Act which relate to the duties of the Comptroller, it seems clear that a proceeding taken under those sections by the Comptroller does not raise a *litis contestatio*. The Comptroller does not stand in the position of a litigant, nor does the trustee. The Comptroller has to report to the Court if the trustee does not give a satisfactory explanation, and whether, if the Court, after hearing the explanation of the trustee, does or does not think it proper to make an order, it acts *ex mero motu*. There is not, either in form or in substance, any lawsuit between the Comptroller and the trustee. The trustee would, of course, be entitled to appeal against the order of the Court, if he thought it unjust; but the Judge having come to the conclusion that he ought not to make any order, there is nothing to form the ground of an appeal.

It is said that any person aggrieved by an order would be at liberty to appeal.

But, by the words "person aggrieved," is not meant a man who is disappointed of a benefit which he expected to receive, or which he might have received if some

different order had been made. A person aggrieved must mean a man who has suffered a grievance—a grievance when some decision has been given which has the effect of inflicting on him some injury or grievance in respect of his property or otherwise.

It is true, that in *Ex parte Ellis* we held that when an adjudication of bankruptcy had been made, founded upon the execution of a bill of sale as an act of bankruptcy, the holder of the bill was a person aggrieved by the adjudication, and was entitled to appeal against the order of adjudication, because that adjudication seriously affected his *status* and his rights. So in the case of *Ex parte Walters*, we held that a creditor who had not been heard before the Registrar or the Chief Judge, was entitled to appeal against an order for registration of resolutions for liquidation, as being a person aggrieved, because the question of registration or non-registration of such resolutions is one that affects the interests of all the creditors equally. In the present case there is no person prejudiced by the refusal of the County Court Judge, except in so far as the bankrupt has lost some benefit which he might have obtained if an order had been made. There is nothing here equivalent to an adjudication, as in the case I have mentioned, or anything which deprives the appellant of any right he may have against the trustee. If there has been any misfeasance on the part of the trustee, the bankrupt, or any creditor, may apply under section 20, not because the Comptroller has made a report to the Court, but he is entitled to make his own case against the trustee. And here, any application by the bankrupt should have been made to the Court in the first instance, and then the applicant would have been in the position of a litigant, and would have had a right of appealing from any order which the Court might have made on his application.

In my opinion, the appellant in this case has not suffered any grievance, he has hardly sustained even a *damnum*, and if he has, it is *damnum absque injuria*.

BAGGALLAY, L.J.—I agree.

BRAMWELL, L.J.—I also agree. Upon an examination of section 57, it seems to

*Ex parte Sidebotham; in re Sidebotham.*

me that the report of the Comptroller is a matter between him and the trustee. There is no judgment or decision, or finding of the Court upon the report. I should doubt whether any other person would have a right to attend the proceedings. Suppose the Comptroller had the right to appeal from the order or refusal of the Judge, and he did not think fit to do so, is that a reason for an appeal being brought by the bankrupt or a creditor?

The general rule is that an appeal must be brought by the party who has endeavoured to maintain the contrary of that which has been decided. It is not so much that there is a disability on the part of the bankrupt to appeal, as that no one, except the Comptroller, is entitled to appeal.

I come to this conclusion the more readily, because, under section 20, there can be a *litis contestatio* raised between the bankrupt and the trustee.

JAMES, L.J.—I wish to add that in *Ex parte Dillon*, the question whether a creditor was entitled to appeal was not really argued. We stopped counsel for the trustee on the point. We only heard him on the question whether the appellant should be allowed a further opportunity of proving his debt. All that we decided was that a person who alleged himself to be a creditor, but had not tendered any proof of his debt, could not appeal.

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Solicitors—Le Riche & Son, agents for James Gardner, Manchester, for appellant; Phelps, Sedgwick & Biddle, agents for Sale, Seddon & Co., Manchester, for trustee.

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[IN THE COURT OF APPEAL]

JAMES, L.J.	} <i>In re</i> HOARE; <i>ex parte</i> NELSON.
BRETT, L.J.	
COTTON, L.J.	
1880.	
March 4.	

*Judgment Creditor—Writ of Sequestration—Chose in Action—Secured Creditor—The Bankruptcy Act, 1869, s. 16, sub-sect. 5.*

*A judgment creditor issued a writ of sequestration and served it upon executors holding in their hands a legacy payable to the judgment debtor, who shortly afterwards went into liquidation:—Held, that the creditor, as against the trustee in liquidation, was not a secured creditor within sub-section 5 of section 16 of the Bankruptcy Act, 1869.*

*Quære—whether the judgment creditor, if he had obtained an order restraining the debtor from receiving the legacy, would have been a creditor holding a charge or lien on the debtor's property within the section.*

This was an appeal from the decision of Mr. Registrar Brougham, acting as Chief Judge.

On the 22nd of February, 1879, E. Hunt, a judgment creditor of T. Hoare for two sums of 74*l.* 3*s.* 4*d.* and 73*l.* 9*s.* 4*d.*, issued a judgment debtor's summons against T. Hoare under section 5 of the Debtors Act, 1869, calling upon him to appear before a Judge in Chambers to be examined as to his means of payment, and to shew cause why he should not be committed to prison for his default in payment of the judgment debts. The hearing of this summons was adjourned from time to time.

On the 9th of June E. Hunt issued two writs of sequestration founded on the two judgment debts, and the next day gave notice of the writs to and served copies of them upon the executors of T. Chapman, under whose will T. Hoare was entitled to a legacy of 300*l.*

On the 29th of October E. Hunt issued a summons calling on T. Hoare to shew cause why he should not be restrained from receiving the legacy, and why the sequestrators should not receive from the executors the amount of the judgment debts and pay the same to

*In re Hoare; ex parte Nelson.*

Hunt, which summons was adjourned to the 4th of November.

On the 3rd of November the debtor filed a liquidation petition, and the same day an injunction was granted restraining further proceedings on the summons.

The balance of legacy (after certain admitted deductions) was in the hands of the solicitors to the executors, and they on the 26th of November, in answer to a letter written them on behalf of R. Nelson, the trustee under the liquidation, wrote as follows: "The executors are ready to pay the trustee the balance, less any expenses proper to be allowed them, with the consent of the sequestrators, or upon being satisfied the trustee can give a good discharge notwithstanding the writs of sequestration."

On the 18th of December an application by the trustee to the Court for an order declaring that he was entitled, as against the sequestrators, to payment of the balance of the legacy, was dismissed by the Registrar on the ground that Hunt by virtue of the writs and the notice to the executors was a secured creditor under section 16, sub-section 5, of the Act.

The trustee appealed.

*Mr. Winslow and Mr. S. Woolf*, for the appellant.—The writs were issued under Order XLVII., which adopts the practice of the old Court of Chancery, and followed Form 10 in Appendix F. to the Rules of Court, and were issued on the judgment debtor's summons.

[BRETT, L.J.—That order is an order to do something within a limited time, but it is difficult to say that it is a judgment. The order requires the writ to be issued on a judgment.]

Just so. There must be a judgment ordering the debtor to do some act within a limited time. This debtor's summons is not a judgment within the meaning of the Order. If this decision stands it will practically do away with section 87 of the Bankruptcy Act, and we shall hear no more of writs of *fi. fa.*

[BRETT, L.J.—What do you say they ought to have done?]

They ought to have got a charging order on the legacy in the hands of the executors. But, even if the writs were

properly issued, still they have no order for payment of the legacy; they have only a summons to shew cause why some such order should not be made. They have acquired no charge, therefore, on the legacy, and, notwithstanding the writs, there is nothing to prevent the executors from paying over the legacy to the debtor or his trustee in liquidation, and the sequestrators would have no remedy—

*Willcock v. Terrell*, Law Rep. 3 Ex. D. 323;

*Crispin v. Oumano*, 38 Law J. Rep. P. & M. 28; Law Rep. 1 P. & D. 622;

*Wilson v. Metcalfe*, 1 Beav. 263; 8 Law J. Rep. Chanc. 331.

Even an order restraining the debtor from receiving the legacy would not give the creditor a charge. We submit, therefore, that he is not a secured creditor within section 16, sub-section 5, of the Act. They also referred to

*Ex parte Joselyne*, 47 Law J. Rep. Bankr. 91; Law Rep. 8 Ch. D. 327;

*Ex parte Williams*, 41 Law J. Rep. Bankr. 38; Law Rep. 7 Chanc. 314;

*Johnson v. Chippindall*, 2 Sim. 55; *Seton on Decrees*, 4th ed. vol. ii. p. 1577.

*Mr. Horton Smith and Mr. Mears*, for the respondent.—We obtained a judgment and served our writ of sequestration on the executors, who accepted our notice and admitted our title subject to prior claims. They do not refuse to pay us. It is simply a question between the trustee in bankruptcy and ourselves.

[JAMES, L.J.—Suppose the executors paid the legacy to the trustee could you bring an action against them? Have they in any way made themselves trustees for you?]

We submit they have on the correspondence. Even if the writs were improperly issued in the first instance it is too late to question their validity now. We contend that the respondent by issuing and serving the writs has done all he can to reduce the legacy into possession, and has therefore acquired a charge upon it—

*Ward v. Booth*, 41 Law J. Rep. Chanc. 729; Law Rep. 14 Eq. 195;

*Burdett v. Rockley*, 1 Vern. 58.

*In re Hoare ; ex parte Nelson.*

If the service of a garnishee order binds the debt in the hands of the garnishee, by parity of reasoning, the service of the writ of sequestration should have a like effect—

*Ex parte Joselyne (ubi supra) ;*

*Emanuel v. Bridger*, 43 Law J. Rep. Q.B. 96 ; Law Rep. 9 Q.B. 286.

The principle is the same, and the analogy of cases like

*In re The London Cotton Mills Company*, 25 W. R. 109 ;

*Levy v. Lovell*, 48 Law J. Rep. Chanc. 357 ; Law Rep. 11 Ch. D. 220 ; on App. 49 Law J. Rep. Chanc. 305 ; Law Rep. 14 Ch. D. 234 ;

*Ex parte Evans*, 48 Law J. Rep. Bankr. 97 ; Law Rep. 11 Ch. D. 691 ; on App. 49 Law J. Rep. Bankr. 7 ; Law Rep. 13 Ch. D. 252 ;

applies.

JAMES, L.J., said.—It appears to me that the judgment creditor in this case has entirely mistaken his course of procedure. He should not have issued a writ of sequestration, but ought to have obtained a charging order. He has simply got under this writ of sequestration—assuming it to be good, although I cannot understand how it was ever issued in this case—a general charge on the debtor's property. It did not create a charge on this particular fund any more than the mere issue of a writ of *fi. fa.* to a sheriff creates a charge on any particular goods of the judgment debtor. The judgment creditor must get a particular charge on some particular property of the debtor. It appears to me that a writ of sequestration is in the same position as a garnishee order which has not been served. If a garnishee order creates no charge until it has been served on the garnishee, *a fortiori* a sequestration order does not create a charge until something has been done to enforce it against some particular property of the debtor.

BRETT, L.J., said.—I am of the same opinion. The question is, whether the respondent had before the filing of the liquidation petition obtained a charge on

this legacy in the hands of the executors. It seems to me that the mere issue of the writ of sequestration did not charge the legacy in the hands of the executors, supposing it to be a debt due from them to the judgment debtor. I have very great doubts whether the writ was properly issued, but as it has not been set aside I must assume that it is good. Now here nothing was done beyond issuing the writ, and giving notice to the executors and serving them with copies of it, and I know of no legal effect flowing from that notice and service. It does not bind or affect any particular debt. It cannot, in my opinion, be put higher than the issuing of a writ of *fi. fa.* to the sheriff, and that was held in *Ex parte Williams* not to oust the title of the trustee in bankruptcy of the judgment debtor. Also *Ward v. Booth*, in my opinion, is against the respondent. In that case the Master of the Rolls seems to have thought that something more than the issue of the writ of sequestration ought to have been done to make it a charge on the property of the defendant. The decisions relating to garnishee orders do not help the respondent, because it has been held that a garnishee order does not bind the debt in the hands of the garnishee until it has been served upon him. I am bound to say that in my opinion the mere issue of a writ of sequestration without something more being done to enforce it creates no charge on a particular debt due to the debtor.

COTTON, L.J., said.—I am also of the same opinion. The question is, whether a judgment creditor who has obtained a writ of sequestration is a secured creditor within the meaning of section 16, sub-section 5, of the Bankruptcy Act? A question has been raised whether the writ was properly issued, but in my opinion that question is not open to us now. It is contended that the mere issue of the writ with notice to the executors gave the creditor a charge on the legacy in their hands, but in my opinion that contention cannot be supported. Sequestrators can no doubt sequester any property of the debtor on which they can lay their hands, and that without taking any

*In re Hoare; ex parte Nelson.*

legal proceedings. But here the fund is a *chose in action*, and how can they create a charge on it by merely giving notice of the writ of sequestration? In my opinion in order to make the writ effectual they must do something more, either as in *Willcock v. Terrell*, by obtaining an injunction restraining the defendant from receiving the fund, or, as in *Wilson v. Metcalfe*, where an action was brought to make it effectual. And in my opinion *Ward v Booth* is certainly against the respondent on this point. As to the case of *Ex parte Joselyne*, we were there dealing with a garnishee order under Order XLV. and rule 3 of that order expressly says that service or notice of the order on the garnishee shall bind in his hands the debt due from him to the judgment debtor, and the Court there held that although something more was necessary in order to make the order effectual as against the garnishee nothing more was required as against the judgment debtor. Here, although the writ of sequestration gave the creditor certain rights, nothing was done by him to make those rights effectual as against the judgment debtor before the filing of the liquidation petition, and, therefore, the respondent is not a secured creditor.

Solicitors—Proctor & Andrews, for appellant;  
James Peace, for respondent.

BACON, C.J. } *Ex parte MEADS; in re*  
1879. } HARRISON.  
Dec. 15. }

*Bankruptcy—Building Contract—Proviso that Materials shall become property of Landowner on Builder's Bankruptcy—Validity.*

A building contract contained a stipulation that in the event of the builder becoming bankrupt or insolvent, all materials, plant, chattels, &c. on the ground, which should not have been actually demised to the builder (under a previous clause, by which the landowner agreed to grant to the builder leases of the houses on completion),

should become absolutely forfeited to the landowner. Power was also given to the landowner, in such an event, to enter and sell the materials, &c.

The builder having filed a petition for liquidation, and building materials, &c. remaining on the land at that date:—

Held, that the agreement above set out was not void, as being contrary to the policy of the Bankrupt Laws, but was perfectly lawful, and that the landowner was entitled to the materials.

Appeal from an order of the Judge of the County Court at Lincoln, declaring that certain wood, bricks, and building materials on a plot of land held by the debtor, W. D. Harrison, under an agreement between himself and the appellant, Agnes E. Meads, and which remained on the land at the date at which the debtor filed his petition for liquidation, were the property of the trustee.

The appellant was the owner in fee of the land; and by the above-mentioned agreement, dated the 17th of September, 1878, agreed with the debtor, a builder, that as soon as he had completed the erection of certain houses upon the land, she would grant him a lease of the land for ninety-nine years, at a rent of 300l. It was further agreed by the same agreement, "that until the said leases shall be granted, the said W. D. Harrison shall hold the premises, subject to payment of the said rent, and to the observance and performance on his part of the terms and stipulations aforesaid, and subject to the power of distress and entry in default of any of the stipulations aforesaid on his part, or on his becoming bankrupt or insolvent, or assigning over his estate and effects for the benefit of his creditors; in either of which cases all improvements, materials, implements, plant, chattels and effects, on the said ground, or adjacent thereto, which shall not have been actually demised and leased to the said W. D. Harrison, shall be and become absolutely forfeited to the said A. E. Meads, her executors, administrators or assigns, but without prejudice to any right of action that may have accrued to her or them under this agreement (which is not to be construed as an actual demise); and the

*Ex parte Meads; in re Harrison.*

said A. E. Meads, her executors, administrators or assigns, are to be at liberty to re-enter and take possession of the said ground, premises, chattels and effects, without any formal proceeding, and to re-let or sell the same to any person, or otherwise use and enjoy the same as fully as if this agreement had never been entered into."

On the 28th of January, 1879, Harrison filed a petition for liquidation, and a trustee was appointed, who took possession of the wood, bricks and building materials lying upon the property occupied by the debtor. He also, on the 3rd of June, 1879, served upon A. E. Meads two notices of motion, one for leave to disclaim the agreement of September, 1878, the other, for an order that the materials belonged to him.

The County Court Judge gave leave to disclaim the agreement, and upon the second motion made an order, declaring that the clause in the agreement, relating to the forfeiture of the building materials in the event of bankruptcy, was against the policy of the Bankrupt Laws, and ordering the wood, bricks, plant, chattels and materials which were on the land at the time of filing the petition for liquidation, to be given up to the trustee.

From this decision A. E. Meads appealed.

The trustee disclaimed.

*Mr. D. Nasmith*, for the appellant.—Similar agreements were held to be perfectly lawful, in

*Brown v. Bateman*, 36 Law J. Rep.

C.P. 134; Law Rep. 2 C.P. 272;

and

*Ex parte Dickin; in re Waugh*, 46 Law J. Rep. Bankr. 26; Law Rep. 4 Ch. D. 524.

But apart from this, the trustee having disclaimed, he is in the same position as if he had never had any interest in the agreement, and cannot now retain rights arising out of it—

*Ex parte Stephens; in re Lavies*, 47 Law J. Rep. Bankr. 22; Law Rep. 7 Ch. D. 127.

*Mr. Winslow* and *Mr. Brough*, for the trustee.—The cases of

*Brown v. Bateman* (*ubi supra*)

and

*Ex parte Dickin; in re Waugh* (*ubi supra*)

are distinguishable from the present case; the former, because there the builder was not a tenant, and the agreement also contained an express provision, that the building materials brought upon the land should be considered as immediately attached to the freehold; the latter, because there, the buildings were to be erected by the builder upon the landlord's own land, and to be paid for by him, and

*Ex parte Stephens; in re Lavies* (*ubi supra*)

only applies where there are fixtures, not to mere loose materials.

BACON, C.J.—There is not, in my opinion, any such distinction between the present case and *Ex parte Dickin; re Waugh*, as Mr. Winslow has attempted to draw. I am aware that in some respects that case differs from the present, but there is no doubt that an agreement very similar to the present one in all material points was declared valid and no fraud on the Bankrupt Laws. There is nothing unlawful in a landowner contracting with a builder that, upon condition of his building certain houses, of which when completed leases should be granted, a certain state of things should exist, namely, that in the various events contemplated, the contract should be considered broken, and all the materials and plant be forfeited to the landowner. *Brown v. Bateman* contains the principle applicable to all cases of this sort, and the present case is, in my opinion, not distinguishable from it.

As to the question of the trustee's disclaimer, I do not consider that *Ex parte Stephens; re Lavies* has any application to the present case, for the trustee cannot reject one part, and yet take the benefit of another part of the agreement.

Appeal allowed, with costs.

Solicitors—*Lewis & Sons*, for appellant; *Clarkson, Son & Greenwell*, agents for *Grange & Winttingham, Grimsby*, for trustee.

## [IN THE COURT OF APPEAL.]

JAMES, L.J. }  
 BRETT, L.J. } *In re LEE; ex parte GOOD.*  
 COTTON, L.J. }  
 1880.  
 March 18.

*Liquidation—Proof by Secured Creditor without realising or valuing Securities—Debt provable in Bankruptcy—Declaration of Dividend—Duty of Trustees to make a Reserve—The Bankruptcy Act, 1869, ss. 40, 41, 42, 43 and 72—The Bankruptcy Rules, 1870, rules 136, 312, 313, 314.*

*A trustee, on declaring a dividend, is not bound to make a reserve in respect of a proof by a secured creditor who has not realised or put a value on his security.*

*In such a case the creditor has no debt provable until he has realised or valued his security; and if, by force of circumstances, he is unable so to do before a dividend is declared, his proper course is to apply to the Court, under section 72, to postpone the dividend, and the Court has jurisdiction to make such order as the justice of the case may require.*

This was an appeal from the decision of Bacon, C.J.

On the 22nd of June, 1878, Lee & Sons, blanket manufacturers, filed their liquidation petition in the Dewsbury County Court, and at the first meeting of the creditors J. Good and J. Close were appointed trustees.

The London and Yorkshire Bank were creditors of the debtors to a large amount, and were entered in their statement of affairs as more than fully secured.

The trustees wrote the general manager of the bank for full particulars of the claim of the bank and of the value and nature of the securities they held. Some correspondence ensued, and ultimately, on the 21st of August, 1878, the bank sent in a proof, which stated that "at the date of the filing of the liquidation petition, the debtors were indebted to the bank in the sum of 8,754*l.* 17*s.* 5*d.* for money lent and advanced, with interest and discounts thereupon, but which sum has since been reduced by the realisation of securities in the hands of the bank to the sum of 6,529*l.* 4*s.* 1*d.*, for

which sum the bank held no security except 244 bales of blankets, 55 pieces of army cloth, an assignment from the debtors to the bank of moneys owing to them from the India Office, and certain bills of exchange mentioned in the schedule, but the value of which securities we are unable and do not now propose to estimate."

On the 22nd of August the solicitors of the trustees sent to the bank a notice requiring them, "within fourteen days from the date hereof, to estimate and assess the value of the security held by you in respect of the debt due to you by the above-mentioned debtors, as prescribed by rule 136 of the Bankruptcy Rules, 1870."

The bank did not value their securities, and, after some further correspondence, the trustees, on the 9th of September, served the bank with a notice of rejection of their proof, and of exclusion from dividend in the form given in Bankruptcy Forms, 1870, No. 126, which concludes thus: "Take notice that such exclusion will be final, unless within fourteen days you apply to the Court to prove your debt, and proceed with such application with due diligence."

The bank, however, made no application to the Court, but wrote the trustees that they intended to proceed with the realisation of their securities, and to substitute a fresh proof when they were realised, and added, "Meanwhile you will please take notice that we have a claim upon the estate, a proof for which we shall submit so soon as we are in a position to do so."

Subsequently the trustees gave the usual statutory notice in the *Gazette* of their intention to declare a dividend, and on the 3rd of January, 1879, declared a dividend of 3*s.* 6*d.* in the pound, payable on the 15th of January, on which day the dividend was paid to those creditors who had duly proved their debts.

On the 16th of January, 1879, the bank, having realised their securities, sent in a proof for 2,635*l.* 10*s.* 5*d.*, and the trustees informed them that, as it had not been sent in previously to the declaration of the dividend, they were not entitled to receive a dividend on it.

*In re Lee; ex parte Good, App.*

On the 12th of July the County Court Judge, on the application of the bank, ordered the trustees to pay the bank a dividend of 3s. 6d. upon the amount of their proof. This amounted to an order for personal payment on the trustees, as they had no assets of the debtors in hand.

The trustees appealed.

The appeal was heard before

BACON, C.J. (January 12, 1880), who delivered judgment as follows: I am of opinion that the learned Judge's order was quite right. The long correspondence which has been read shews the manner in which these parties dealt with the subject-matter. The bank, having a large debt due from the debtors, also held securities, particulars of which had not been given, and had never been asked for. The suspense account represents, if I understand it, the value of the securities which the bankers held. Some delay took place. The bankers did not make up their minds to proceed at once to realise the securities, and this correspondence then takes place. I cannot say that I think the trustees' solicitors have behaved with the fairness which might be expected from men of business. However, in the end the proof was rejected only because the securities had not been realised and the account completed. It seems to me that, from the very beginning, the trustees had plain and distinct notice that the bank insisted on their right to prove for something, and they have never sought to prove for anything more than was due to them after the securities had been realised. Then the trustees shelter themselves under the excuse that they had given the notice which the rules required, and that at that time the proof had been rejected. The 312th rule is the only one of any importance which has really any reference to the case, and it is the rule on which the learned Judge has founded his decision. I say it is the only one of importance, although I have attended to the 136th rule, which carries into effect the long-established practice in bankruptcy, and which says, "If the trustee or any other creditor shall be dissatisfied with

the value put on the security the trustee may require the security to be realised." So that, if the trustees, who knew all along perfectly well that the bank held their security, and insisted upon their right to realise it, no particular value being placed upon it, were dissatisfied, they had it in their power to insist upon the proof being brought before the Court to ascertain the amount remaining due after the security had been realised. Then the 312th rule, which is more to the purpose than that which I have read, says, "Seven days at least before declaring any dividend under a liquidation by arrangement, a notice shall be gazetted by the trustee in the form given in the schedule requiring the creditors to send in their names and addresses, and particulars of their debts or claims, and on declaring a dividend a sufficient reserve shall be made by the trustee for such dividend upon all debts and claims notified to him in pursuance of such notice. The trustee shall also be deemed to have notice of the debts of all creditors whose names are inserted in the debtor's statements of affairs, and except where any such debt has been adjudicated upon"—not decided by the trustee, he is no Judge—"prior to the declaration of the dividend a similar reserve shall be made in respect thereof." And the next rule provides, "Whenever the trustee shall reject the claim or proof of any creditor, he shall give notice to such creditor by post in the form given in the schedule;" and I find the form consistent with the whole of the provisions of the statute, for Form 126 is as follows: "Take notice that I, the undersigned trustee, under this liquidation, do hereby reject your claim against the estate, and that I intend to exclude you from dividend in respect thereof." The meaning of the rules, as far as they are applicable to the subject before me, is that the trustee shall not be embarrassed or troubled; but they mean also that the creditors who have just claims shall have their rights decided if there is a question between the trustee and the creditor holding security. The trustee has it in his power. Why? In order that he may know what debts, if any, shall be admitted to proof, and to

*In re Lee; ex parte Good, App.*

arrange a dividend in respect of those debts. It enables him, moreover, to give that notice which I have just referred to—that is to say, the express notice to the creditor claiming that it is the intention of the trustee to exclude him from any dividend in respect of the claim which the trustee has rejected. In this case the trustees rejected the claim simply because the form of it did not please them. But the only proper ground of rejection is that no debt is due to the bank company. No rejection ought to take place except where a man makes an unfounded claim against an estate. Where the claim is good and the trustee nevertheless rejects it, the creditor has a right under the 313th rule to apply to the Court to have his proof admitted. The 136th and the 313th rules do in fact dispose of this case, and the circumstances fully justify the order which has been made.

Against this decision the trustees again appealed.

*Mr. De Gez* and *Mr. Cooper Willis*, for the appellants.—There is nothing in the rules of the Act of Parliament which required the trustees to do more than give the usual notice, which they did, that if the proof was not sent in by a certain date the bank would be excluded from participating in the proposed dividend. That having been done, and the bank not having taken any further steps, why should the trustees pay this dividend out of their own pockets? The bank led them to suppose that they did not intend to realise for the present and would not value their securities. The rules in bankruptcy and liquidation are distinct—

*Ex parte Hopkins*, 43 Law J. Rep. Bankr. 127; Law Rep. 9 Chanc. 506,

and a secured creditor is not entitled to receive a dividend until he has duly proved his debt; and if he does so before realising his security he must put a value on it—

*Ex parte Bestwick*, 45 Law J. Rep.

Bankr.; Law Rep. 2 Ch. D. 485, and until he has done so the trustee is not bound to make a reserve in respect of it. They also referred to—

Sections 25 and 34 of the Bankruptcy Act, 1869,

and

Bankruptcy Rules, 1870, rules 136, 312, 313, 314.

*Mr. Winslow* and *Mr. Finlay Knight*, for the respondents.—Under the old law a creditor could disturb a dividend at any time—

*Ex parte Sturton*, De Gez, 341, and if he made a claim before a dividend was declared, a reserve was made for him. There is no express provision now for entering a claim, but we rely on the correspondence as shewing that the trustees had distinct notice that we had a claim and were apprised of the nature of it. It was a claim in respect of a "debt provable in bankruptcy, the subject of a claim not yet determined" within section 42 of the Act, and the trustees were bound under sections 40—42, having notice of it, to make a reserve to meet the claim if, when determined, anything should be found to be due. The trustees were not entitled under rule 136 to shut the bank out altogether.

*Mr. De Gez*, in reply, referred to—  
Rule 272 and section 72.

JAMES, L.J.—I am of opinion that the order of the County Court Judge, affirmed as it has been by the Chief Judge, cannot be sustained. It proceeds entirely upon the footing of a misfeasance on the part of the trustees, making them personally liable for the amount which it is alleged they ought to have retained as a dividend for that which might ultimately prove to be the amount of the respondents' debt after they had realised their security. There is one very obvious arithmetical mistake in the order which has not been pointed out. It is quite clear that, if the trustees ought to have reserved something for the debt, the dividend would not have been 3s. 6d. in the pound. It would have been so much less. It would have been the proper dividend upon the whole of the amount of the other debts, plus this debt. That would have been the proper measure of the dividend, and there would have been so much less for the other creditors. The liability, if any, of the trustees (because it is really not a

*In re Lee; ex parte Good, App.*

personal liability) must, as it appears to me, depend on the provisions of the Acts and the rules. [His Lordship read sections 40—43.] Now, in the present case, beyond all question, the dividend was declared before anything that could be called or alleged to be a proof was sent in by the bank. It is admitted that what was called or sworn to as a proof or claim, in the first instance, was no proof at all, but was a mere estimate sent in for the purpose of completing the negotiation which was then pending between the bank and the trustees as to whether the trustees would not take the goods out of the hands of the bank, paying the whole of their demand. The other proof was sent in after the dividend had been declared, and in respect of that the bank had not become entitled to a dividend. If that were so, why were the trustees bound to retain a dividend for it? It is said that by section 42 they are bound to make provision for "debts provable in bankruptcy, the subject of claims not yet determined," and that this claim of the bank was a debt provable in bankruptcy within that section. But what was the debt provable in the bankruptcy? The ultimate balance that might be due either after their security had been realised, or after deducting the amount of the valuation which they choose to put upon the security at their own risk in the manner prescribed by the Act and rules. That was the only debt provable in bankruptcy, and therefore there was no debt provable in bankruptcy in respect of which the trustees could have retained anything. They had no means of knowing what was the debt which was provable in bankruptcy. The words "the subject of claims not yet determined" cannot, as it seems to me, enlarge the words "debts provable in bankruptcy." They must refer to such a case as this, where a man says, "I have a debt of so many thousand pounds provable in bankruptcy," the trustee has not yet made up his mind whether he will admit it or not, and has reserved it for further evidence or for further investigation. In such a case as that there is a "debt provable in bankruptcy, the subject of a claim not yet determined." If the trustee had come to

a decision adverse, wholly or partially, to the claim of a creditor, then the creditor should apply to the Court to determine what was the amount of the debt provable in bankruptcy. It all proceeds upon the notion that there is at the time a debt provable in bankruptcy, which the trustee can either admit or make provision for. It appears to me that the possibility that a claim might arise at some future time by reason of the security proving insufficient does not come within—I do not say the spirit—but the meaning of the words "the subject of claims not yet determined;" and if so, it appears to me that there was nothing in respect of which the trustees could have made any reservation. It does not appear to me that any case is made out of misconduct or misleading on the part of the trustees on the correspondence so as to entitle the bank to a personal remedy against them irrespective of their rights under the Act. The case, therefore, is reduced to the question of the legal rights of a secured creditor, who, for some reason or other, good or bad, does not choose to realise or value his security before a dividend is declared. Possibly great inconvenience might arise to secured creditors where they might be proceeding to realise their securities but might be prevented by circumstances from realising before the time at which the trustee proposed to declare a dividend, and possibly injustice might in that way arise. But it appears to me that a conclusive answer to that objection is given by reference to the very comprehensive 72nd section of the Act, which enables the Court to provide a remedy for every wrong which might otherwise be done in the distribution of the assets, and to give proper effect to every just claim, whether of a secured creditor or any other. A creditor who was placed in any such difficulty might apply to the Court for leave to enter something equivalent to what was called a claim under the old practice, and for an order that the trustee should reserve a sufficient sum to meet the claim, if it should ever be made good, and the power of the Court is unlimited. Upon the plain words of the Act, it appears to me that the bank had not put

*In re Lee; ex parte Good, App.*

themselves in the position to say that there was any debt provable in bankruptcy in respect of which a dividend ought to have been reserved to wait for the realisation of their securities. I think that the order ought to be discharged.

BRETT, L.J.—The claim of the bank is founded on the assertion that the trustees had had such notice of their debt that, if they declared a dividend, they ought to have made a sufficient reserve for the bank. But I think that claim fails on this ground, that before the dividend was declared, the bank never sent in such a claim as obliged the trustees to take notice of it and make provision for it when declaring the dividend. As I understand it, the trustees had not sufficient notice of the debt, either in the debtor's statement of affairs—because in that the securities held by the bank were stated to be in excess of their debt—or in the claim or notice sent in by the bank. Then the trustees gave the bank notice under rule 136 to value their securities. Then there is a correspondence and a further notice by the trustees. Then the bank give the trustees notice that they have a debt and hold securities, and that a proof would be sent in finally which would state the amount due to them after deducting the sums realised by their securities. The question is, whether that notice was sufficient to impose upon the trustees the obligation to reserve a dividend. In other words, whether the particulars shewing the amount claimed as a debt, which a secured creditor must send in before a dividend is declared, must be a claim shewing the amount claimed, and the amount realised by his security, or the valuation of his security. The conclusion at which I arrive is, that the notification of the debt must go to that extent. It must contain the particulars of the debt, the particulars of the security, and it must state the amount realised by the securities, or put a value on them. Now, supposing such particulars are sent in, and that the trustee is inclined or advised to dispute them, then the question of reserving a dividend arises. If, after such a claim has been

sent in, he determines to dispute and yet is minded to declare a dividend, he is bound to make a sufficient reserve in respect of the claim, and if he does not, he will have failed in his duty. That to my mind is the true application of the 312th rule. But before the trustee is called upon to make any reserve, or to consider whether he will or will not dispute the claim, the claim must have been sent in in the form I have mentioned. I think it might be tested in this way. Suppose that, at the moment the dividend is declared, the trustee had rejected the claim, and the creditor maintained that it was sufficient in form; and suppose the matter were brought before the Court upon that dispute, the claim being in the form in which it was in the present case, without either a statement that the security had been realised or a value being put upon the security, could the Court say that it was a sufficient claim in form? In my opinion the Court must say that it was not in the right form, and ought to be rejected, and that there was nothing which the trustee was bound to consider. And it seems to me that rule 272 confirms this view. It states expressly that if the creditor has not realised his security he must value it, and unless he has done one or the other he cannot prove, and if he cannot prove, he cannot claim to prove. The difficulties which suggested themselves to our minds during the arguments, and which may in practice lie in the way of a creditor who is thus called upon either to realise or to value his security, and who cannot immediately realise or value, so as to complete his proof, are, I think, met by the 72nd section, which seems to me to give the creditor the right to come to the Court and say, "I cannot realise my security yet, and I am, therefore, bound to value it; but the practical difficulty is so great that I ask the Court to give me relief by postponing the declaration of a dividend;" and under that section the Court would have full power, it seems to me, in a proper case, to grant that relief. If there was any such difficulty on the part of the bank here, that was their remedy; but they did not follow that remedy. Before the dividend

*In re Lee; ex parte Good, App.*

was declared they had not sent in to the trustees any claim or proof, or notification of claim or proof, which bound them to do anything, and under those circumstances the trustees were in no way in default.

COTTON, L.J.—The question here is, whether or not the trustee can be held personally liable for not having made a reserve in respect of the claim of a secured creditor.

Now, under section 40, "A creditor holding a specific security on the property of the bankrupt, or on any part thereof, may, on giving up his security, prove for his whole debt. He shall also be entitled to a dividend in respect of the balance due to him, after realising or giving credit for the value of his security, in manner and at the time prescribed. A creditor holding such security as aforesaid, and not complying with the foregoing conditions, shall be excluded from all share in any dividend." That is to say, a creditor holding a security can only prove on realising or valuing his security; and in this case the creditor did not do so. The question, therefore, which we have to consider is this, whether, under the circumstances of the case, the bank was entitled to require the trustee to make a reserve for whatever sum they might ultimately be held to be entitled to prove. The argument was based partly upon the rules and partly on the Act of Parliament. It was said that the trustees were bound to make a reserve, and then to give notice to the creditor to realise or value. Now let us see how the matter stands. Could the trustees in this case have compelled the realisation of the security?

Rule 136 says, "A creditor who is desirous of giving credit for the value of his security, in order to entitle him to a dividend in respect of the balance of his debt after deducting the assessed value, shall give notice thereof to the trustee, and the value of his security shall be determined in the same manner as the value of the security is to be determined, as prescribed with reference to the balance upon which a secured creditor may vote, and such creditor shall give credit for the value within fourteen days after

he shall be called upon by the trustee so to do, unless he shall be out of England, and then within such reasonable time as the trustee may fix, having regard to the means of communication between England and the place where the creditor may be, and in default thereof shall be deemed to be fully secured. If the trustee or any other creditor shall be dissatisfied with the value put on the security, the trustee may require the security to be realised."

This rule, upon which the Chief Judge seemed to have relied, has, in my opinion, no application at all to the present case, because it applies to the case of a creditor who only wants to value and not realise. If a creditor, who seeks to prove, does not give a valuation which the trustee is satisfied with, then the trustee may say, "No, you shall not prove on a valuation, but you must realise before you prove;" and by that means he indirectly acquires the power to compel a realisation; and that certainly is the case here, where, as far as I can see, there is nothing whatever (independently of that rule) which is supposed to give the trustee power to compel a realisation. What then can he do? It was suggested that case came under section 31. [His Lordship read the section.] But if a reserve is to be made, we must consider for what it is to be made. I think that section 31 has no application to the present case. Under that section a creditor is to be admitted to prove for the full amount of his estimated debt or liability, and it applies, not to the case of a secured creditor who has only to go in as a creditor for the balance after realising or valuing his security, but to the case of claims which are of doubtful value by reason of a contingency or otherwise. In my opinion, under section 31 there is no power for the trustee to make any valuation of the ultimate balance due to a secured creditor. That being so, how does it stand on the other hand with the creditor? The creditor has the right and the power to value his debt. He has a power, which the trustee has not, to fix a definite sum for which he is either entitled to come in and prove, or to stand as a person who would be a creditor independently of the question of security. That being so, one must find

*In re Lee; ex parte Good, App.*

very strong words in the Act to justify us in holding that there should be a reserve made in the case of a person who has in his own hands the power of fixing a definite sum for which he is entitled to come in and prove, while the trustee on the other hand has no such power. We now come to rule 312: "Seven days at least before declaring any dividend under a liquidation by arrangement, a notice shall be gazetted by the trustee in the form given in the schedule, requiring the creditors to send him their names and addresses, and the particulars of their debts or claims, and on declaring a dividend, a sufficient reserve shall be made by the trustee for such dividend upon all debts or claims notified to him in pursuance of such notice. The trustee shall be also deemed to have notice of the debts of all creditors whose names are mentioned in the debtor's statement of affairs, and (except where any such debt has been adjudicated upon prior to the declaration of the dividend) a similar reserve shall be made in respect thereof." It is said that notice of intention to declare a dividend should have been given. But, in fact, notice had been given. In bankruptcy notice is to be given of the day on which dividend is to be declared or paid. In liquidation the notice is the same in substance though different in form, because the notice requires all those creditors who have not already proved to come in and do so after the notice, that if they do not they will be excluded from the proposed dividend. That notice was sent in the way which the rules require in the case of liquidation by arrangement. That being so, a proof was sent in by the bank. It is in the form of a proof, but in reality it was not a proof but only a claim to prove for the full amount of the debt without valuing or realising a security. It is, however, true, that afterwards there was a notice given of an intention to prove. Now certainly that cannot be called a claim or proof; and is there anything in the rules which requires a reserve to be made for such a claim? Rule 312 provides that "on declaring a dividend a sufficient reserve shall be made by the trustee for all debts or claims notified to him in pursuance of that notice." That cannot mean a claim that has been sent

in and rejected by the trustee. That case is dealt with by rule 313. Then we come to rule 314: "Except as before mentioned, the trustee shall declare dividends amongst such creditors only as have proved their debts up to the time of such declaration of dividend, and no creditor who has omitted to prove his debt, or to send to the trustee the particulars of his claim, or whose name does not appear in the debtor's statement, shall be entitled to disturb any such dividend or to make any claim in respect thereof against the trustee; but, upon proof of his debt, any such creditor shall be entitled to receive the same prior to the payment of any further dividend to the other creditors." How can it possibly be said that in this case the bank sent to the trustees the particulars of their claim? What they said was this: "We think you are right in rejecting our proof, possibly we may after realising be in a position to make some claim. We hope that will not be the case, but it may turn out that we shall be creditors for a balance after we shall have realised our securities." I think that, having regard to the Act of Parliament, and the provision in the rules, in order to require any reserve to be made, the claim must be for a sum certain and definite, or a claim for a sum in the nature of a contingency capable of being estimated under section 31. In my opinion, having regard to the Act of Parliament, and the rules, there was no necessity or right in the present case to call upon the trustees to make a reserve, or any ground for holding them personally liable to the bank for not having done so. If any difficulty should arise in the case of a secured creditor, from his inability to value or realise his security before the declaration of a dividend, I am of opinion that the Court would, on his application, have power under section 72 to give a remedy by making an order for the postponement of the declaration of the dividend. The order must, therefore, be discharged with costs.

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Solicitors—Walker & Co., agents for Walker & Co., Dewsbury, for appellants; Bischoff, Bompas, Bischoff & Co., for respondents.

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## [IN THE COURT OF APPEAL.]

JAMES, L.J. }  
 BRETT, L.J. } *In re WHITE; ex parte*  
 COTTON, L.J. } MASON.  
 1880.  
 March 21. }

*Two Bankruptcy Petitions—Second Petition first heard—Adjudication—Collusion between Debtor and Second Petitioner—Appeal by First Petitioner—“Person aggrieved”—The Bankruptcy Act, 1869, s. 71—Bankruptcy Rules, 1870, rules 42, 48.*

*Where two bankruptcy petitions are presented against the same debtor, and the debtor colludes with the second petitioning creditor, so that an adjudication is made on the second petition behind the back of the first petitioning creditor, the Court will, on the application of the first petitioning creditor, give him the conduct of the proceedings consequent on the adjudication.*

*In such a case the first petitioning creditor is not a “person aggrieved,” within section 71 of the Bankruptcy Act, 1869, and has no locus standi to appeal against the adjudication.*

This was an appeal from the decision of the Chief Judge.

On the 22nd of November, 1879, Edward White, a trader, of Worksop, filed a liquidation petition in the Sheffield County Court, but the proceedings fell through.

On the morning of the 18th of December, Nicholson & Co., creditors of White, presented a bankruptcy petition, the act of bankruptcy being the liquidation petition, which was answered for the 8th of January, and the clerk of Nicholson & Co.'s solicitor started at once for Worksop, to serve the petition, but on arriving there found that the debtor had that morning left for Sheffield. The same morning the debtor's solicitor got scent of the petition, and telegraphed to the debtor at Worksop: “Meet me by eleven o'clock train at Station Hotel (Sheffield). Keep inside the hotel till I come. Danger.” This the debtor did, and returned the same afternoon to Sheffield with his solicitor, who filed a second bankruptcy petition on behalf of Mason & Co., friendly

creditors of White, founded on the same act of bankruptcy as the first petition.

The second petition was forthwith served on the debtor, who consented to an immediate adjudication, and deposed by affidavit that “delay would be avoided,” if the second petition were heard before the first; and thereupon the debtor was adjudicated a bankrupt. Later the same day the first petition was served on the debtor. Nicholson & Co. immediately appealed to the Chief Judge, under section 71, as persons aggrieved by the adjudication.

On the 7th of January, 1880, the first meeting of creditors under the adjudication was held, when a trustee was appointed, with a committee of inspection.

On the 23rd of February, 1880, the appeal was heard before, and the following judgment delivered by

BACON, C.J.—The first objection is that the appellants are not “persons aggrieved.” In my opinion, that objection cannot be sustained. A man who is prevented from pursuing a legal remedy which he has commenced by the interposition of another person, an interposition which, in the judgment of the Court, ought not to be permitted, is unquestionably an aggrieved person.

Then for the rest, the rule is as plain as can possibly be. The policy of the law is equally plain. If a man presents a petition asking for an adjudication in bankruptcy, the rule directs that thereupon a day shall be named for the hearing of the petition. In this instance the day named was the 8th of January. The reason for that is, that there may be due time for serving the debtor, and time furnished to the debtor after being served, to prepare himself to oppose the petition if he can. The 8th of January was the day which the Court, having seisin of the subject, fixed for the hearing of the petition. Applying the 48th rule to that, it is clear that the only day upon which the petition is to be heard—without reference whatever to the other clauses of the 48th rule—is the 8th of January. That is the day on which the petitioner is to present himself to the Court, and ask for an adjudication. In the meantime, somebody else

*In re White; ex parte Mason, App.*

comes in. Then the 48th rule having, in plain and distinct terms, enacted that "the petition which was first presented shall be first heard," goes on to provide that, "where such first petition shall not have been served, or where the debtor shews cause against the petition, or where delay will be avoided, any other petition which has been served may be heard." It is quite clear that it is a perversion of terms of the Order to say, that any petition which may be presented in the interval between the presentation of the petition and the decision of the Court can be entertained by the Court, unless one of these things shall have happened.

One is, where "such first petition shall not have been served." Here the service is not disputed. Mr. Willis has suggested that the service was by an agent, and not by an attorney. But the rule which requires that the service shall be made by an officer of the Court is only to prevent the service being improperly and irregularly made, and so becoming the subject of dispute. There is no such case before me. The agent of the petitioning creditor is just as much justified in serving the petition as anybody else. It is not disputed that it was served. Then upon the very day on which the petition was presented, but at a later hour, there is the interference of another creditor. In my opinion, it is an abuse of the practice of the Court, on the part either of a petitioner or his solicitor, that, after he has obtained an order that on a particular day the Court will hear and determine his petition, and after he has, in due course, proceeded to serve his petition, the time provided by the Statute not having run out, some person should come with the bankrupt, so to speak, in his hand—I do not say in collusion with the bankrupt, but with his consent—and so take the wind out of the sails of the first petitioner, and make the clause in the 48th rule, which declares that the petition which is first presented shall be first heard, a nullity. If the petition cannot be served, that is one case mentioned in the provisions of the rule, that might have happened; or if the debtor had shewn cause against the petition, that might have happened. But here it is not

suggested that he had any cause to shew, for he consents to an adjudication upon a petition which alleges the same act of bankruptcy. The act of bankruptcy is quite clear upon both the petitions, because the filing of a petition for liquidation is an act of bankruptcy. What delay would have been avoided? There was no delay to be avoided, yet the debtor swears in his affidavit that "delay would be avoided if the petition presented by Messrs. Mason & Co. was heard before the petition presented by the other creditor." Nothing can be worse, and one regrets to find affidavits so readily prepared, and so readily sworn to, without a single fact on which to justify the statement that delay would be avoided. There was no evidence that the proceedings were delayed. The proceedings were perfectly regular, and I think the first petitioner is entitled by law to be first heard; and as none of those causes mentioned in the rule have intervened to prevent the hearing of the first petition, I am of opinion that the first petition must be proceeded with, and the proceedings under the second petition must be suspended. That will avoid the possibility of any failure of justice through no adjudication being made upon the first petition.

I think under the circumstances of this case I must give the appellant his costs against the petitioning creditor in the second petition; for, to speak plainly, I look upon it as a mere juggle and contrivance. There is a telegram from an attorney, who was then acting for the bankrupt, for him to come in all haste, and to keep himself concealed until that attorney should have the opportunity of conferring with him and directing him what to do. In justification of this I have heard nothing whatever. I look upon that as a contrivance, which the ingenuity of the respondent's solicitor suggested, to baffle the first petitioner.

The appeal will be allowed with costs; and there will be a declaration that the order of adjudication is not to prejudice the right of the appellants to prosecute the first petition, and all proceedings under that adjudication must be stayed until after the first bankruptcy petition has been heard and disposed of.

*In re White; ex parte Mason, App.*

Against this order Mason & Co. appealed.

*Mr. De Gez* and *Mr. E. Cooper Willis*, for the appellants.—The respondents had no *locus standi* to appeal. They were not persons "aggrieved" by the adjudication within the meaning of section 71, because they sought an adjudication themselves.

*Mr. Winslow* and *Mr. W. Wood*, for the respondents.—This case is governed by the 48th rule in bankruptcy. The creditor who first petitions is entitled to have his petition heard before any petition subsequently presented, because, by presenting his petition, he is taking a step at his own risk for the benefit not only of himself, but of all the other creditors. It has been the invariable practice of the London Court of Bankruptcy for years never to adjudicate on a second petition in the absence of the first petitioning creditor. Notice is always given him if the second petition is to be heard first. Here the act of bankruptcy in both petitions was the same, and both petitions were appointed to be heard on the same day and at the same place and hour; and then the bankrupt, without any notice being given to us, consents to an immediate adjudication on the second petition. A bankrupt will never be allowed by a ruse of this kind to get rid of a first petition. The only reason why the first petition was not served before the second was that the debtor, in collusion with his solicitor, avoided the service, and then consented to an immediate adjudication on the second petition. If our petition had been first heard we should have had our costs and the conduct of the proceedings—

*Ex parte Page*, 25 Law Times, N.S. 716;

Bankruptcy Rules, 1870, rules 31, 33.

We are, therefore, persons aggrieved.

*Mr. De Gez*, in reply.

*JAMES, L.J.*, said—I am of opinion that the order of the Chief Judge cannot be sustained. The 48th rule in bankruptcy says that where two or more petitions are presented to the same Court against the same debtor, the petition which is first presented shall be first heard, *i.e.*,

*ceteris paribus*, the petition first presented shall be first heard. Then the rule goes on to say, "Where such first petition shall not have been served . . . or where delay will be avoided, any other petition which has been served may be heard"—that was the case here—"and, if the Court makes adjudication thereon, the Court shall, after the expiration of the time allowed for appealing against the adjudication, dismiss all the other petitions upon such terms as to costs as it shall deem just." Here the first petition was not served, and therefore the Court had jurisdiction to hear the second petition, which had been served, and made an adjudication thereon; and that adjudication stands, and I have heard nothing that impugns its validity. It may be that the bankrupt has facilitated that adjudication by consenting to an immediate adjudication under rule 42. That rule says, "Where a petition is presented and the act of bankruptcy stated to have been committed is that the debtor has filed in the Court to which the petition is presented a declaration admitting his inability to pay his debts, the Court may, if the debtor consents in writing thereto, hear and adjudicate upon the petition forthwith." This rule, therefore, has conferred on a debtor the power to facilitate the hearing of a bankruptcy petition. Therefore, what has been done here is right in point of form and cannot be set aside, although the debtor has chosen to avoid the service of the first petition, and to assist the second petitioning creditor in getting an adjudication. The same kind of thing used to be frequently done in Chancery. A bill was filed by a creditor against the executors of a deceased debtor for the administration of his estate, and then another bill was filed by another creditor against the same executors for the administration of the same estate, and the executors consented to an immediate decree in the second suit. I cannot see any distinction in principle between a creditor seeking administration of an estate in Chancery and a creditor seeking the administration of an estate in Bankruptcy. What the Court of Chancery did, when it found that the second suit had been instituted for the purpose of

*In re White ; ex parte Mason, App.*

avoiding administration under the first suit, was to stay the proceedings in the first suit, and to give the plaintiff in that suit liberty to apply in the second suit for the conduct of the proceedings. In my opinion, the Court of Bankruptcy, which is also a Court of Equity, has full power to do the same thing. Here, if Nicholson & Co. had applied to the County Court Judge and said, "The debtor has colluded with the second petitioning creditor, and has consented to an immediate adjudication behind our back, give us the conduct of the proceedings," the County Court Judge would have given them the conduct of all the proceedings as though the adjudication had been made on their petition. It appears to me that the first petitioning creditors would have had no difficulty whatever in getting an order giving them the conduct of the proceedings in consequence of this contrivance between the debtor and his solicitor. That being so, the respondents are in the wrong in not having taken the proper course, and they must take the consequences.

BRETT, L.J.—The main question is the true construction of rule 48. [His Lordship read the rule.] It seems to me that the time there alluded to is the time when the second petition is called on to be heard. The rule says that "any other petition which has been served *may* be heard," which seems to shew that a second petition can be heard immediately. The Court is not obliged to hear it or to adjudicate upon it, but if it does, then, after the time limited for an appeal, the other petition must be dismissed. Mr. Wood referred me to rule 60, and said that that rule prevented the interpretation I am putting upon rule 48. But rule 60 is a provision entirely in favour of a bankrupt, and does not apply to the present case. This being the construction of the rules, if the intent and meaning of the telegram and the other circumstances had been known to the County Court Judge when he was asked to hear and adjudicate upon the second petition, I think he probably would have refused to hear it. But he did not know the real facts, and he did adjudicate the debtor a bankrupt,

and I am not prepared to say that we ought to set aside that adjudication. It seems to me that the wrong remedy was asked for by the respondents. If what is alleged is true, they might have asked for and would have obtained the carriage of the proceedings under the second petition, but that cannot be done now. Assuming the facts alleged to be true, I object altogether to what has been done. The solicitor had no business to interfere at all; but inasmuch as the wrong remedy was sought by the respondents, they must pay the costs of this appeal.

COTTON, L.J., said—I am of the same opinion. I think we ought to consider what order ought to have been made on the appeal by the first petitioning creditors to the Chief Judge that the adjudication might be set aside. I have very considerable doubts whether they were "persons aggrieved" by the adjudication. How could they be when that was the relief which they themselves were asking for by their petition? They are not aggrieved by the adjudication but by the consequences which flow from it, by which they lose the conduct of all the proceedings under the adjudication. What they ought to have done was to apply to the Court, not to set aside the adjudication, but that the first petitioning creditors might be at liberty to carry on the proceedings under it, and, if necessary, to use the names of the second petitioning creditors for that purpose, indemnifying them against costs. But it is too late now to make any such application, for a trustee has been appointed. I am of opinion, however, that the Court has full power to give the conduct of the proceedings under an adjudication to the first petitioning creditor when the second petitioning creditor has, in collusion with the debtor, snatched an adjudication on his petition. Then as to the costs. The respondents have been wrong throughout. Instead of asking for the conduct of the proceedings, they asked that the adjudication might be annulled, and therefore they must pay the costs of the appeal and of the Court below; but they must have the costs of their petition up to the time of the adjudication out of the bankrupt's estate.

*In re White; ex parte Mason, App.*

JAMES, L.J.—I wish to add that I fully agree with Lord Justice Cotton that the respondents were not “persons aggrieved” by the adjudication within the meaning of section 71 of the Bankruptcy Act, 1869.

*Appeal accordingly allowed with costs.*

Solicitors—Layton & Jaques, agents for D. H. Porrett, Sheffield, for appellants; Nash & Field, for respondents.

BACON, C.J. } *In re ARMYTAGE; ex parte*  
1880. } MOORE AND ROBINSON'S  
March 22. } NOTTINGHAMSHIRE BANK-  
April 12, 19. } ING COMPANY.

*Bill of Sale—Registration—Trade Machinery assigned together with Freeholds—Bills of Sale Act, 1878, ss. 4, 5, 7—To what extent retrospective.*

Section 7 of the Bills of Sale Act, 1878, is retrospective to the extent of giving a fixed legislative construction to the term “separately assigned or charged” as regards all deeds, whether executed since or before the commencement of that Act, but is not so for the purpose of extending to deeds executed before the commencement of the Act the wider meaning given to the term “chattels” by sections 4 and 5.

Appeal from the County Court at Derby.

On the 10th of December, 1878, the debtors, Messrs. Armytage, executed a mortgage to the appellants of a freehold stone quarry, “together with the limekilns, stone-sawing mills, buildings, steam engines, boilers, furnaces, shafts, gearing, motive power, plant, fixed and movable machinery, apparatus, rails, sleepers, implements, fittings, and fixtures of every description, now or at any time hereafter fixed to or placed upon or used in or about” the quarry. The whole subject-matter mortgaged was included in one testatum: there was a power to sell the hereditaments and premises thereinbefore expressed to be thereby granted “or any

part or parts thereof, either together or in parcels,” and the mortgagors agreed to attorn tenants to the mortgagees at the rent of 400*l.* a year.

This deed was never registered as a bill of sale. Before the date of the deed the mortgagors had erected a steam crane and laid down a tramway at the quarry. In July, 1879, Messrs. Armytage presented a petition for liquidation, and in August, 1879, a trustee was appointed. At the latter date there remained in the debtors' possession at the quarry, amongst other things, the steam crane and the rails of the tramway, both of which the trustee claimed. The County Court Judge by the order appealed from adjudged the crane to be the property of the mortgagees, and the rails of the trustee. Both trustee and mortgagees appealed.

The evidence as to the mode in which the crane and rails were attached to the ground was somewhat conflicting, but the Chief Judge was of opinion that both crane and rails were so fixed to the freehold as to be incapable of removal without damage to it.

Mr. De Gez and Mr. A. Morley, for the banking company, the mortgagees.—Upon the evidence both these articles were fixed to the freehold, so that, although trade machinery, neither the steam crane—

*Longbottom v. Berry*, 39 Law J. Rep. Q.B. 37; Law Rep. 5. Q.B. 123; nor the tram rails—

*Turner v. Cameron*, 39 Law J. Rep. Q.B. 125; Law Rep. 5 Q.B. 306; would have been considered chattels before the Bills of Sale Act, 1878—

*Mather v. Fraser*, 2 Kay & J. 536; 25 Law J. Rep. Chanc. 361;

*Holland v. Hodgson*, 41 Law J. Rep. C.P. 146; Law Rep. 7 C.P. 323.

It is true that the Act makes trade machinery “chattels,” but it is not retrospective (section 3), and this deed was executed before it came into operation.

Mr. Winslow and Mr. Horace Smith, for the trustee.—Under the law as it existed before the Bills of Sale Act, 1878, even assuming that these articles were actually fixed to the freehold, this instrument would have required registration, for it

*In re Armylee*; *ex parte Moore and Robinson's Notts Banking Co.*

includes things plainly chattels as well as articles which may or may not be so—

*Waterfall v. Penistone*, 6 E. & B.

876; 26 Law J. Rep. Q.B. 100;

*Begbie v. Fenwick*, Law Rep. 8

Chanc. 1075 (n);

*Ex parte Daglish*, 42 Law J. Rep.

Bankr. 102; Law Rep. 8 Chanc.

1072;

*Ex parte Barclay*, 43 Law J. Rep.

Bankr. 137; Law Rep. 9 Chanc.

576.

But both tram rails—

*The Duke of Beaufort v. Bates*, 3 De

Gex, F. & J., 381; 31 Law J.

Rep. Chanc. 481—

and cranes—

*Ex parte Astbury*, 38 Law J. Rep.

Bankr. 9; Law Rep. 4 Chanc.

630—

have before the Bills of Sale Act, 1878, been actually held to be not fixtures, but chattels.

But that Act (section 5) renders trade machinery (which these certainly are) "chattels," and section 7, when it says, "No fixtures . . . shall be deemed under this Act to be separately assigned . . . by reason only that they are assigned by separate words, or that power is given to sever them, . . ." excludes trade machinery from the term "fixtures." That being so, the latter part of section 7 says that, "the same rule of construction shall be applied to all deeds and instruments, including fixtures, . . . executed before the commencement of this Act." The object and effect of the Act was finally to settle conflicting decisions, and to put one legislative construction upon all deeds, whether executed since or before the commencement of the Act, and thus to apply the definition of the term "fixtures" contained in the Act, to all deeds whether old or new.

This deed should, therefore, have been registered as a bill of sale.

BACON, C.J.—I have listened with much interest to the arguments addressed to me, but have no difficulty in deciding the questions raised, whether of fact, or of law, upon the construction of the statute, which had for its object to make the law perfectly clear not only as to

deeds executed after, but also as to those executed before the Statute came into operation.

I can entertain no doubt upon the evidence that these things were plainly fixtures, as that term was understood before the passing of the new Act. I consider that the rails and sleepers are one thing put down in such a way as to be incapable of removal without damage to the freehold, and my opinion is the same with regard to the crane.

Then how is it under the new Act?

The 4th section says, "The expression personal chattels shall mean goods . . . and (when separately assigned or charged) fixtures and growing crops, but shall not include . . . fixtures (except trade machinery as hereinafter defined) when assigned together with a freehold or leasehold interest in any land or building to which they are affixed." Then follows the 5th section, which enacts that trade machinery shall be deemed to be personal chattels, with certain exceptions. I quite agree with Mr. Winslow's argument that the 7th section of the new Bills of Sale Act should be read as if it had said, Whereas, in certain cases, it has been decided by Vice-Chancellor Wood, and other Judges, that an instrument which conveys an interest in land, and at the same time things which are chattels, does not require registration, and in certain other cases a contrary decision has been come to, now in order to remove all doubts, be it enacted—and so on; and the Legislature then proceeds by enactment to establish the principle laid down by Vice-Chancellor Wood. That section, in fact, defines what is meant by fixtures being "separately assigned, or charged," and says, that they are not to be deemed to be so by reason only that they are assigned by separate words, or power is given to sever them from the land, if by the same instrument any freehold or leasehold interest in the land to which they are attached is also conveyed or assigned to the same person or persons; and the latter part of the section, for the purpose of removing all doubt and difficulty arising out of the conflicting decisions, provides that the same rule of construction of the term "separately

*In re Armytage; ex parte Moore and Robinson's Notts Banking Co.*

assigned or charged" shall be applied to bills of sale executed before the commencement of the Act. For that purpose the new Act is no doubt retrospective, but I cannot agree with the argument that it is also retrospective for the purpose of extending to old deeds the wider interpretation of the term "chattels" given by the 4th and 5th sections of the new Act. I have, therefore, to look at the terms of the deed. [His Lordship read the deed, and was of opinion that there was a conveyance of the land and the rails and crane together in such a manner that registration would have been unnecessary under the old law, and continued:] In my opinion, upon every ground the appeal of the trustee must fail, and he must pay the costs of the mortgagee both here and in the Court below.

Solicitors—T. W. Nelson, agent for Freeth, Rawson & Cartwright, Nottingham, for mortgagees; F. C. Greenfield, agent for Leech, Smith & Broughall, Derby, for trustee.

[IN THE COURT OF APPEAL.]

JAMES, L.J.  
BAGGALLAY, L.J. } *Ex parte* THE NATIONAL  
BRAMWELL, L.J. } MERCANTILE BANK; *in*  
1880. } *re* HAYNES.  
April 15, 22.

*Bill of Sale—Validity of—Statement of Consideration—Explanation and Attestation by Solicitor—Bills of Sale Act, 1878 (41 & 42 Vict. c. 31), s. 10, sub-ss. 1, 2.*

*The business that is by the Bills of Sale Act required to be stated in the affidavit, is that by which the grantor of the bill of sale ordinarily seeks to make his livelihood, in respect of which he contracts debts, and which is his substantial, as distinguished from any ancillary employment which he may carry on in addition for amusement or otherwise.*

*The Act of 1878, section 10, sub-section 1, does not require that in point of fact the effect of the bill of sale should be explained by the attesting solicitor to the grantor, but*

*only that the solicitor should state that he had done so; and the neglect by the solicitor to perform his duty of giving the explanation does not avoid the bill of sale (either as against the grantor himself or any other person).*

*The consideration which the Act requires to be stated in the deed is the real consideration as between the grantor and grantee—that which would have been properly stated in the deed independently of the Act; but the Act does not require every collateral bargain or stipulation connected with the advances to be set out.*

Appeal from the decision of the Chief Judge, affirming the decision of the Judge of the Croydon County Court, holding that a bill of sale given by the debtor Haynes to the bank was void as against the trustee in his liquidation.

The bill of sale was executed on the 3rd of March, 1879, and after reciting that the bank had agreed to advance to Haynes 2,050*l.*, witnessed that in consideration of the sum of 2,050*l.* advanced to him by the bank at or before the execution of the deed, Haynes assigned to the bank his furniture, growing crops, &c.

In the bill of sale Haynes described himself as of Chelsfield Hall Farm, near Orpington, in the county of Kent, farmer and auctioneer.

The execution of the bill of sale was attested by two witnesses, one of whom was a solicitor, and the attestation clause affirmed that the effect of the deed had been duly explained to Haynes previous to his executing it.

In the affidavit made on the registration of the bill of sale, Haynes again described himself as a farmer and auctioneer residing at Chelsfield Hall Farm.

Three objections were raised as to the validity of the deed—

1. The affidavit did not truly state the residence and occupation of the grantor. The grantor at the date of the deed was farming and living at Chelsfield Hall Farm, and had done so for four years previously. Before that he had been an auctioneer, with an office at 64, King William Street, London, on the door of which was a plate with his name on it. He had also been in the habit of discount-

*Ex parte National Mercantile Bank; in re Haynes, App.*

ing bills at the same office, and it was alleged that he still carried on that business, and ought to have described himself, for the benefit of his London creditors, as a bill discounter. But upon the evidence the Court came to the conclusion that he had for some time practically ceased to carry on any bill-discounting business, though he occasionally renewed old bills of his which were outstanding, and some of which were held by the bank.

2. That the bill of sale had not been fully explained by the attesting solicitor, although the attestation clause, as required by the Act of 1878, stated that it had been so explained. Haynes, by an affidavit, swore that the solicitor had not informed him of a provision in the deed that the bank were to be at liberty to charge a five per cent. commission on taking possession under the deed.

3. That the consideration was not truly stated. The loan recited in the deed was the sum of 2,050*l.*; but the debtor had handed back to the bank a bag containing 550*l.*, part of the advance of 2,050*l.*, for the purpose of taking up some of the outstanding bills on which he was liable to the bank.

The Chief Judge held the objections good, and declared the bill of sale void.

*Mr. Winslow and Mr. Robson*, for the bank.—The fact that the grantor had carried on formerly the business of a bill discounter does not make the description of his residence and occupation as given in the bill of sale and affidavit insufficient.

His residence and his principal occupation—that from which he makes his living—is stated, and that is enough—

*Luckin v. Hambyn*, 18 W.R. 43;

*Tuton v. Sanoner*, 3 Hurl. & N. 280; 27 Law J. Rep. Exch. 293;

*Smith v. Cheese*, 45 Law J. Rep. C.P. 156; Law Rep. 1 C.P. D. 60;

*Ex parte The National Deposit Bank*, 26 W.R. 624;

*Ex parte Harvey*, 2 Mont. & Ayr. 593; 1 Deac. 571.

The business of a bill discounter is one unknown to the law. He never was described as such.

The consideration was in fact 2,050*l.*; that was the real consideration for which

the bill of sale was given; and the collateral or ancillary arrangement that he should pay back a part for the purpose of taking up bills on which he was indebted, and for which he was liable to the company, need not be stated.

Then, as to the third objection, the Act does not require an explanation by the solicitor to make the deed good—it requires attestation by a solicitor, and a statement that he has explained the deed—

*Davis v. Goodman*, 49 Law J. Rep.

C.P. 344, reversing 49 Law J. Rep.

C.P. 101; Law Rep. 5 C.P. D. 128, reversing Law Rep. 5 C.P. D. 20;

*Hill v. Kirkwood*, 28 W.R. 359.

*Mr. Hemming and Mr. R. Vaughan Williams*, for the trustee in liquidation.—The description of the grantor as farmer and auctioneer in his farm in Kent is not sufficient to give notice to his creditors who knew him in London as a bill discounter—

*Larchin v. The North Western Deposit*

*Bank*, 44 Law J. Rep. Exch. 71;

Law Rep. 10 Exch. 64.

Then, as to the explanation by the solicitor. The cases of

*Davis v. Goodman (ubi supra)*

and

*Hill v. Kirkwood (ubi supra)*

are cases where the question has arisen between grantor and grantee, and it may be right that the grantor should in that case be bound; but no case has yet been decided under the 8th section of this Act as between the grantee and the trustee of the grantor, who is a trustee for all the creditors.

Can a bill of sale be said to be duly attested if a solicitor state something that is not true in the attestation clause?

Then, as to the consideration. The transaction in the bank parlour must be taken to have been a comedy or farce, as it was called by the Chief Judge. The true consideration was clearly 1,500*l.*, not 2,050*l.* There was a bargain between the parties as to application of the loan.

The consideration is not properly set forth, and therefore, on the authority of

*Ex parte Carter; in re Threapleton*,

Law Rep. 12 Ch. D. 908,

the bill of sale is void.

*Ex parte National Mercantile Bank; in re Haynes, App.*

JAMES, L.J.—I am of opinion that the judgment of the Chief Judge ought not to be affirmed. Three points have been made. The first is the alleged misdescription of the grantor of the bill of sale. He described his residence accurately—it was the only residence he had—and he described himself as a farmer and auctioneer. Now it is beyond all question that the business of a farmer was substantially his only business; he was not occupying a farm for amusement, but farming was his main business—the business by which he was minded to obtain and endeavoured to obtain his living, and in respect of which he contracted debts. He had formerly been an auctioneer, and had his name on a plate on the door of an office in London. But it is said that he ought also to have described himself as a bill discounter. What is the exact business? It is of course a very common habit for bankers and bill brokers, and other merchants in general, whose businesses are known to the law, to discount bills; but bill discounting is not a trade known to the law, as far as I know, nor is it to be found given as a trade in any of the Bankruptcy Acts. To a certain extent this man did attempt to make a living out of the practice of discounting bills. But I am quite satisfied from the evidence that for all practical purposes the whole thing had come to an end before the bill of sale was executed. For the purpose of discounting bills a man must have cash or credit; but here the debtor's cash was exhausted, and his credit exhausted, for all practical purposes, months before the execution of this bill of sale; and all he was doing was this: there being bills which he had discounted outstanding in the hands of the bankers who had given him credit, and on which bills he was liable to the bankers when they were coming due, and in order to prevent being pressed by the bank for payment, he obtained from his customers renewed bills, which he could take to the bank in substitution of the old ones. All that he was doing was renewing those bills for the purpose of avoiding being pressed by the bank, and for all practical purposes he was not carrying on the business of a bill discounter. It does not, therefore, appear

to me that he misdescribed his residence or his occupation.

The second point is this: the grantor had not had the contents of the bill of sale fully explained to him before he executed it. That point came before us recently in the case of *Hill v. Kirkwood*, although it did not then require actual decision; but I desire now, as the matter is raised for adjudication, to express my opinion on this question. What the 10th section of the Bills of Sale Act, 1878, requires, is that the bill of sale shall be attested by a solicitor, and "the attestation shall state that before the execution of the bill of sale the effect thereof has been explained to the grantor by the attesting solicitor." But that provision is not accompanied by any enactment, express or implied, that the neglect by the solicitor to perform the duty which he states he has performed—that is, the neglect by the solicitor fully to explain to the grantor the contents of the bill of sale—is an omission which renders the bill of sale void either as against the grantor or any other person.

As regards the grantor, the matter has been already decided by the Court of Appeal at Westminster in *Davis v. Goodman*, that such omission does not avoid the bill against him. If it is not void against the grantor it is not void against anybody who derives title through him, unless there be some statutory provision which places such a person in a different position.

Now, under the 8th section, as against certain persons claiming through the grantor, the trustee in his bankruptcy, or his execution creditor, it is enacted that certain violations of the Act shall avoid the bill of sale; that is, that those persons, in respect of those particulars shall stand on a different footing from the grantor. There is no such provision in respect of the omission of any of the things required by sub-section 1 of the 10th section. It is no duty of this or any other Court to introduce into an Act an enactment which is not contained in it, because it may be thought to be a logical addition to the Act. I do not mean to say that I think that the provision which it is suggested we ought to imply would be

*Ex parte National Mercantile Bank; in re Haymes, App.*

a logical addition, for I think all the Act was intended to require was, that there shall be a solicitor, and he shall attest the execution of a bill of sale, and in the attestation shall state that he explained to the grantor the effect of the bill of sale before execution. The Legislature thought that they were giving the grantor protection by requiring the solicitor to pledge his word that he had given the explanation. That protection may not be always sufficient, but that is all which the Legislature saw its way to give. The solicitor, being an officer of the Court, is liable to punishment for improper conduct; he would be liable to an action at the suit of his client, and to proceedings of a penal character in respect of any fraudulent collusion between him and the grantee. I am of opinion that when there is such an attestation the provisions of the Act are fully complied with, and that the validity of the bill of sale is not affected by the omission of the attesting solicitor to give the explanation which he says that he has given.

Then the third objection is this, that the consideration is not stated in the bill of sale as required by the statute. The statute requires that the bill of sale shall set forth the consideration for which such bill was given; of course if the consideration is to be set forth it must be set forth truly; though I do not think that it need be set forth with minute accuracy, it must be set forth substantially.

In my opinion, the consideration for this bill of sale was really the advance of a loan of 2,050*l.*, which was lent by the bank to the grantor. Mr. Williams put it that any collateral stipulations connected with the application of the money lent should be set forth as part of the consideration, and that there should be recitals shewing the proposed dealings with the money. I cannot think that the insertion of recitals stating the motive and object of the advance and collateral stipulations is required by the Act.

The motive of the lender is no part of the consideration, though it may be a collateral inducement to the advance. Suppose that, instead of there having been bills due by the grantor to the bank there had been outstanding in the hands

of some other bank, bills upon which the lenders were liable, and they had said to the borrower, You must take up those bills; or, suppose a loan made upon the security of farming stock, and the lender said, You must pay the rent due to your landlord, or my security will be prejudiced. They are stipulations which may be honestly made, and form part of the bargain between the parties, but yet form no part of the consideration which is by the Act required to be set out. The Act requires the real consideration to be set out, but does not require that every bargain or thing connected with the advance should be set out. Of course a bargain that the whole sum which is stated to be the consideration shall be handed back again by the grantor would be a sham, and the Court would know how to deal with it; but a bargain that the part of the money advanced shall be applied in payment off of a debt really due from the borrower to the lender is not in any sense a sham.

The Chief Judge characterised what took place in this case as a comedy, but I see no reason for so characterising it.

In the cases of payment for shares in a company where there are two debts—one due from the company to the shareholder and the other due from him to the company in respect of calls on the shares—we have frequently held that it is not necessary to go through the form of paying with one hand and receiving it back again with the other, but that the one debt may be set off against the other; but the going through that form does not make the transaction bad, and that is in fact what has been done here.

According to my view, the real consideration as between the grantor and grantee—that is, the consideration which would have been properly stated in the deed independently of the Act—is that which the Act requires to be stated in the bill of sale, and that course has been stated in this case.

BAGGALLAY, L.J.—The Chief Judge has held that the bill of sale duly executed and attested is void as against the trustee in liquidation of the grantor. Against that judgment this appeal is brought.

*Ex parte National Mercantile Bank ; in re Haynes, App.*

Three grounds are urged for upholding the decision of the Court below. The first is misdescription of the residence and occupation of the grantor. The second, that no explanation was in fact given by the solicitor, though the attestation states that it was given; and thirdly, that the consideration for which the bill was given was untruly set forth.

As to the first objection. The provision in sub-section 2 of the 10th section of the Act of 1878 is not new, it was contained in the old Act of 1854, and what is meant by the word "occupation" in the 1st section of that Act is settled by a decision of *Luckin v. Hambyn*, the judgment of which I accept. Chief Baron Kelly says, "The word occupation in the Act means the trade or calling by which the maker of the bill of sale ordinarily seeks to get his livelihood." And Baron Martin says, "The word occupation in the Act means the business in which a man is usually engaged, to the knowledge of his neighbours. The intention is that such a description should be given that, if enquiry be made in the place where the person resides, he may be easily identified."

There can be no question here that the grantor's residence is properly described, and his occupation properly stated. It is not necessary to refer again to what Lord Justice James has said as to the evidence of the bill discounting. It is impossible to say that he obtained his livelihood by bill discounting. Whether the practice of bill discounting is an occupation within the Act of Parliament is a point on which I do not desire to give an opinion. It is suggested that the addition of the word auctioneer in the description is misleading; but an auctioneer is a trader within the Act, and at that time he was in fact tenant of an office in London, on the door of which his name appeared on a plate. I am, therefore, of opinion that his residence and occupation have been correctly described.

As to the second objection. It is clear that there is an attestation clause here, and it states that before the execution of the bill of sale the solicitor explained to the grantor the effect of the bill of sale. If that is so, all that the Act requires to

be done has been done; we should not be justified in going behind the Act and asking whether an explanation was given, or what the nature of the explanation was. No doubt this provision is introduced for the benefit of the grantor; and it may very well be that if no explanation, or an insufficient explanation, has been given, the solicitor would be liable to proceedings at the suit of the grantor.

On the third point, a very subtle argument has been offered by Mr. Williams. No doubt the consideration for the bill of sale was the sum of 2,050*l.* The fact that 550*l.*, part thereof, was applied and agreed to be applied in taking up bills on which the grantor was liable to the grantee, does not appear to me to make any difference.

*Mr. Hemming* referred to the case of *Ex parte Carter ; in re Threapleton*, in which the Chief Judge held that the consideration for the bill of sale was not sufficiently set forth, but that case was very different from the present; though I think it right to say that, as at present advised, I am by no means satisfied that I should have agreed with the decision.

BRAMWELL, L.J.—I am of opinion that the judgment of the Chief Judge cannot stand. As to the objection of insufficiency of explanation, I am of opinion, paradoxical though I may seem, that the statute does not require that there should be any. All the statute requires is, that there should be an attestation clause which shall state that before the execution of the deed its effect has been explained to the grantor by the attesting solicitor.

I do not think that the Legislature in inserting that provision inserted it for the benefit of the grantor. I hope they did not. I think the Legislature has taken sufficient care of persons who are able to take care of themselves.

The title of the Act is "An Act to consolidate and amend the law for preventing frauds upon creditors by secret bills of sale of personal chattels." What I think the Legislature meant by requiring attestation by a solicitor of the execution of a bill of sale, was, to prevent a grantor being made an accomplice in a fraud upon

*Ex parte National Mercantile Bank; in re Haymes, App.*

his creditors, and that the provision was for the benefit of the creditors, and the object was to secure the presence of a respectable and intelligent man when the execution took place.

The 8th section requires certain things to be done; and if they are not done, what is the consequence? Why, that the bill of sale is void against the creditors, not against the grantor. A bill of sale without any attestation or registration would be good as against the grantor. If the present objection were sustained the consequence would be shocking. In half of the cases the grantor would come forward and say, The effect of the bill of sale was not fully explained to me before I executed it. I am of opinion, therefore, that the Act does not require that any explanation should be given to the grantor, only that a solicitor should say that he had explained the document. Then as to the alleged misdescription. Bill discounting is not a definite trade, but if a man was to get his money only in that way, I should think he ought to state it as his occupation. If it were a business carried on in addition to another, as to tailoring for instance, I do not think it would be necessary for him to state it.

But, as a matter of fact, the grantor here was no more a bill discounter than a man would be a farmer who had left his farm and given up farming.

Upon the question of consideration I have felt doubt, but at the same time I am unfavourable to the argument of Mr. Williams. The substance of the transaction I take to be this: The bank says, "You are to have 1,500*l.* and the old bills, but the best way to do that is for us to give you 2,050*l.*, and for you out of that to pay the amount of the bills." These are the facts. I do not see anything like a comedy in it. I think I can guess why this was done. These bills of sale are in a printed form, they did not want to take the trouble of altering the form. That I hold to be the transaction. Although in a certain sense the borrower could have gone away with the 2,050*l.*, and the bank could not have stopped him, but could only have brought an action against him, still I think there was a bargain that he was to go away with

1,500*l.* and the old bills, and not with the whole 2,050*l.* If the bargain had to be described in pleading, the whole terms of the bargain ought to have been stated; but, as Lord Justice James says, what the Act means is this, that that which you could truly have said was the consideration for a deed before the Act was passed, you should still state as the consideration. Take the case of a bill of sale of farming stock for 100*l.*, with an additional agreement that 40*l.* out of that 100*l.* should be paid to the grantee for a particular horse which the grantee desired to purchase, is it necessary to go into the particulars and state on the deed the agreement to pay for the horse? In that case 100*l.* would be clearly the consideration for the bill. If all that is necessary to be done under the Bills of Sale Act is to state honestly the facts, I think that enough has been done in the present case; but I do not feel the same confidence on this as on the other two points. It is sometimes said that the Bills of Sale Act is badly treated, and that attempts are constantly made to escape from it. No doubt that is so, and attempts will always be made to escape from every statute that draws a hard and fast line, and which might have the effect, by some small slip, of defeating a security. If the Act had been drawn in a more lenient form there would have been more inclination to enforce it rigorously. But the rigorous execution of a rigorous Act is really too much, and I think we deal with it properly by reversing the decision of the Chief Judge.

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Solicitors—J. J. Irving, for appellants; Ashurst, Morris & Co., for trustee.

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## [IN THE COURT OF APPEAL.]

JAMES, L.J.  
BRETT, L.J.  
COTTON, L.J. } *In re* WILLSON; *ex parte*  
1880. } NICHOLSON.  
March 18. }

*Liquidation—Creditor's Application to examine Debtor and Witnesses—The Bankruptcy Act, 1869, s. 96—Bankruptcy Rules, 1870, rule 171.*

*Where a trustee declines to examine the debtor or other persons under section 96 of the Bankruptcy Act, and a creditor applies for leave so to do, the latter must make out a prima facie case, or satisfy the Court that there is reasonable probability that the examination will result in some benefit to the estate.*

This was an appeal from the decision of Mr. Registrar Pepys, acting as Chief Judge.

In September, 1878, J. Willson, a licensed victualler, executed a bill of sale of all his chattels, effects and stock-in-trade in favour of B. Beach, to secure a past debt and a then present advance of 200*l*.

In July, 1879, J. Willson filed a liquidation petition, under which a trustee was appointed.

Nicholson & Co., creditors of the debtor to a large amount, applied to the trustee for leave to use his name for the purpose of applying, under section 96 of the Bankruptcy Act, 1869, for a private examination of the debtor, the bill of sale holder, and some other creditors who had sent in proofs against the estate. They offered to bear all the expense of the examinations, and to make over to the trustee, for the benefit of the general body of the creditors, any estate that they might recover.

The trustee declined to permit the use of his name, on the ground that he had fully investigated the debtor's affairs, and was satisfied that the debtor had fully disclosed to him the whole of his estate, and offered to give to Nicholson & Co. all information in his power.

Nicholson & Co. thereupon took out a summons under section 96 of the Bankruptcy Act, 1869, for a private sitting for the examination of the debtor and

witnesses. They deposed that the debtor and B. Beach had for a considerable time been mixed up in monetary transactions; that the liquidation petition was filed by Messrs. Layton, Son & Lendon, who were the solicitors of the trustee, of the bill of sale holder, of the debtor, and of M. A. Willson and P. Willson, relatives of the debtor, who had proofs against the estate; that in the interests of the creditors generally it was essential that a private meeting should be granted for examination of the debtor, Beach, and his relatives with reference to their proofs and their transactions with the debtor.

Mr. Registrar Pepys, as Chief Judge, refused the application, and in delivering judgment said, "On the simple suggestion of one creditor that he is entitled to pursue this course, I do not think I ought to open the door to such an extent as would allow an investigation to be made by every creditor as to every imaginable debt of the debtor. If I were to permit that to one creditor, it might be done by every creditor under the liquidation who (either thinking the best was not being done, or who was in any way aggrieved) might indulge in this luxury, not for the benefit of all the creditors, and would have witnesses from every part of the country, and harass them by examination before this Court for any number of hours. In this case it appears to me perfectly clear that the trustee has made an investigation and enquired into the bill of sale, and has satisfied himself that there was no ground for this examination, or for examining other parties who have proved their debts."

Nicholson & Co. appealed.

*Mr. Creed* (Mr. Robinson with him), for the appellants.—The application is made under section 96 of the Bankruptcy Act, and rule 171. Under the old Bankruptcy Acts reasonable suspicion was sufficient to support an application for the examination of a person capable of giving information respecting the estate of the bankrupt—

*Cooper v. Harding*, 7 Q.B. Rep. 928;  
*Ex parte Alexander*, 1 De Gex, J. & S. 311; 32 Law J. Rep. Bankr. 55.

*In re Willson; ex parte Nicholson, App.*

We submit that same principle still applies. The procedure is analogous to that under sections 115 and 138 of the Companies Act, 1862. It is not necessary to make out a *prima facie* case. Fair suspicion is enough, and as the trustee declines to take it up, we are entitled to do so at our own expense.

*Mr. Winslow and Mr. H. Reed*, for the trustee, were not called upon.

JAMES, L.J., said.—It seems to me that the application in this case was a question for the judicial discretion of the Court. I quite agree with the Registrar that it would be monstrous if any creditor was entitled, *ex debito justitiæ*, to exercise the right of summoning for examination anyone he might wish to examine as to the estate and dealings of the bankrupt. I do not see where the end of that would be. The 96th section confers very inquisitorial powers on the Court, and when a person other than the trustee applies, the Court has to consider whether it is reasonable to summon persons from any or every part of the kingdom to be examined. The applicant must shew a *prima facie* case, or make out to the satisfaction of the Court that there is a reasonable probability that he will be able to recover something for the estate, before he will be allowed to exercise the very strong powers conferred by the section. I am bound to say I cannot see what it is that this creditor wants to find out. At all events, the Registrar came to the conclusion that there was no such *prima facie* case or probability made out as entitled the applicant to summon these persons to be examined, and I agree with the conclusion at which he arrived.

BRETT, L.J., said.—The argument for the appellants has been very clearly and strongly put, but the logical conclusion of it is, that any creditor who thinks that some result may flow to the estate from such an examination, would have the right to insist upon it. That logical conclusion, to my mind, shews that the argument is wrong. The Court has a discretion in the matter, and must be satisfied that there is a reasonable proba-

bility of some benefit resulting to the estate from the examination. In this case I cannot see that there is any reasonable probability of any such result. I think the Registrar was quite right.

COTTON, L.J.—I am of the same opinion.

Solicitors—Nash & Field, for appellants; Layton, Son & London, for respondent.

[IN THE COURT OF APPEAL.]

JESSEL, M.R.	}	SEAR v. LAWSON. CHATTERTON v. LAWSON.
JAMES, L.J.		
BRETT, L.J.		
1880.		
July 21.		

*Sale by Trustee in Bankruptcy of Right of Action—Property of Bankrupt—Ohampery and Maintenance—Bankruptcy Act, 1869 (32 & 33 Vict. c. 71), ss. 4, 17, 25 (sub-ss. 3, 6), 111—Rules of Court, 1875, Order L. rule 4.*

*S., trustee in bankruptcy of W., issued a writ in an action, claiming to have a deed which had been executed by the bankrupt prior to his bankruptcy, purporting to be an absolute conveyance by the bankrupt to the defendant of the equity of redemption in certain mortgaged freehold and leasehold hereditaments, set aside, so far as it purported to be an absolute conveyance, and a declaration that the deed ought only to stand as security for the sum actually paid by the defendant.*

*Subsequently an agreement was come to between O. and S., with the sanction of the committee of inspection, that O. should purchase all the trustee's right in the property, and a deed was executed to carry that agreement into effect.*

*O. thereupon obtained, under Order L. rule 1, an order ex parte, appointing him plaintiff in the place of S.*

*On motion by the defendant in the action to discharge the last-mentioned order on the ground that the sale by S. was in reality the sale of a right to bring an action,*

*Seear v. Lawson, App.*

and therefore within the rule against champerty and maintenance,—

Held (affirming BACON, V.C.), that the right to bring the action was part of the "property" of the bankrupt within the definition of section 4 of the Bankruptcy Act, 1869.

That as such "property" it was by force of section 17 vested in the trustee, and that (whether B. himself could have assigned the right or not) his trustee was by section 25, sub-section 6, empowered to sell it, and that the rule against champerty and maintenance had no application.

Benjamin Webster had mortgaged to Messrs Gatti the Adelphi Theatre and other property for a very large sum. The mortgagees instituted proceedings for foreclosure of this mortgage, or realisation.

The defendant Lawson, son-in-law of Webster, purchased from Webster the equity of redemption in the mortgaged property, which was conveyed to him by a deed dated the 9th of October, 1879, and he paid off Messrs. Gatti their mortgage debt.

Webster subsequently, on the 12th of January, 1880, was adjudicated a bankrupt, and the plaintiff Seear was, on the 4th of February, 1880, appointed the trustee of his estate, and two others were appointed the committee of inspection.

Chatterton, who was a creditor of Webster's to a considerable amount, believing that the deed of the 9th of October, 1879, was a fraud on the creditors, pressed the trustee to take steps to set aside the alleged assignment to Lawson, and on the 4th of March, 1880, the writ in the action, *Seear v. Lawson* was issued. The writ was as follows: The plaintiff's claim is "as the trustee of the property of Benjamin Webster, a bankrupt, to have an indenture dated the 9th of October, 1879, purporting to be an absolute conveyance and assignment by the said Benjamin Webster to the defendant of certain freehold and leasehold hereditaments, subject to divers mortgages, &c., set aside so far as it purports to be an absolute conveyance and assignment of the property therein comprised, and to have it declared that the said indenture ought only to stand as a security for the sum actually

paid by the defendant . . . in respect of or by way of consideration for such conveyance and assignment and interest thereon, &c. . . and to have an account taken of what, if anything, is or may be due to the defendant on the security of the said indenture on the footing of such declaration as aforesaid, and to redeem the property comprised in the said indenture," &c.

On the 9th of March, 1880, at a meeting of the creditors at the trustee's offices, a resolution was passed by the creditors assembled, "that inasmuch as Chatterton had expressed his readiness to continue the proceedings instituted by the trustee to set aside the deed of the 9th of October, 1879, without being indemnified by the trustee for costs, and was willing to purchase such rights as the trustee then had in the equity of redemption in the Adelphi Theatre and other properties mentioned in such deed, that the trustee be authorised, with the sanction of the committee of inspection, to accept a sum of 2,000*l.* for such right, provided Chatterton made such an offer in writing within six days from that date, and paid the amount to the trustee within a week thereafter."

The offer was duly made, and on the 16th of March, 1880, was accepted by the trustee and committee, and on the same day the draft of a formal agreement for the purchase of the trustee's interest was sent by Chatterton to the trustee's solicitors for their perusal. Such draft contained a power of attorney enabling Chatterton to continue the action.

The solicitors objected to the insertion of this power, pointing out that under Order L. rule 4, Chatterton could obtain leave to carry it on in his own name.

Upon these terms a deed was subsequently executed (which was dated as of the 16th of March, 1880) between Seear of the one part, and Chatterton of the other part, whereby, after reciting the mortgage—the deed of the 9th of October, 1879—the bankruptcy of Webster, the contention of the trustee that the deed was fraudulent and the institution of the action, it was witnessed that in consideration of the sum of 2,000*l.* recited to have been paid by Chatterton, Seear covenanted and agreed with Chatterton, his heirs, &c.,

*Seear v. Lawson, App.*

that he, the said Seear, or other the trustee or trustees for the time being of the estate and property of B. Webster, would at any time thereafter, upon the request and at the cost of Chatterton, &c., effectually convey, assign and assure all the freehold and leasehold hereditaments and premises (being the property on mortgage), with their appurtenances, to the use of the said Chatterton, &c., for all the estate, right, title and interest of the said Seear as such trustee, or of such other trustee or trustees as aforesaid, in, to or upon the premises. And Chatterton covenanted with Seear that he would pay the costs already incurred by Seear in the action.

Chatterton, on the 23rd of April, 1880, applied under Order L. rule 4, and obtained *ex parte* an order as of course at the Rolls, appointing him plaintiff in the place of Seear.

The defendant Lawson moved to discharge that order. The motion was heard before Vice-Chancellor Bacon, on the 4th of June, 1880, and was dismissed by him with costs.

The defendant appealed.

*Sir Henry Jackson and Mr. Grosvenor Woods*, for the appellant.—Here the trustee has by the deed purported to assign for value such right as he could sustain to carry on this suit and nothing else. The question is, whether this is a subject-matter capable of assignment. We submit that it is a void assignment, for it is in fact the sale and purchase of a right of suit. The Vice-Chancellor agreed with this view, but thought that the Bankruptcy Act of 1869 made a distinction between the case of a trustee and an ordinary vendor, and that although such a sale by Webster himself would have been champerty and maintenance, a sale by the trustee was authorised by the statute. The head-note of the case of

*Prosser v. Edmonds*, 1 You. & C. Exch. 481

(which is the leading case on the subject), is as follows: "An assignment of a bare right to file a bill in equity for a fraud committed on the assignor is contrary to sound policy and void." That case has been followed—

*De Hoghton v. Money*, Law Rep. 1 Eq. 154; *ibid.* 2 Chanc. 164;

*In re The Paris Skating Rink Company*, Law Rep. 5 Ch. D. 959.

It never was assignable at common law. No statute gives such a right. The test to be applied is, Can you assert your right without bringing the action?

In this case it cannot, because the subject-matter of this assignment is not an equity of redemption, but a right to set aside a conveyance as fraudulent, and such a right can only be arrived at by action; if it can be called a *chose in action*, nobody can be put in possession of it except by means of a suit, and the right which is merely a right of action—a right which gives no possession to the thing in action, except as the result of a successful suit—cannot be assigned in equity nor at law.

The Vice-Chancellor based his judgment on the definition of property in the 4th section of the Act; on the 25th section, sub-section 6, empowering the trustee in bankruptcy "to sell all the property of the bankrupt," &c.; and on the 11th section, which empowers the assignee of "anything in action" belonging to the bankrupt to bring or defend any action or suit relating to such things in action in his own name.

But here he is bringing it not in his own, but in the trustee's name. The effect of these clauses is only this, that the trustee may give a perfectly good title in whatever he has a right to sell to the transferee, and that the purchaser may sue in his own name.

Property as defined by the 4th section only comprises things in action which by law are capable of being assigned, but not things which at common law or on equitable principles ought not to be sold.

[JAMES, L.J.—But here this right must have been originally in Webster, and became vested in the trustee as part of his property. JESSEL, M.R.—The statute has certainly made an assignment from the bankrupt to the trustee in spite of the rule of law against maintenance.]

The property of the bankrupt by the 17th section vests in the trustee on his appointment, but only as it was originally in the bankrupt; and assuming that this right of action is property within the mean-

*Secar v. Lawson, App.*

ing of this clause, still this is a property which the bankrupt could not sell, and therefore the trustee cannot. There are no words in this section which, even upon this assumption, confer on the trustee greater powers of dealing with property vested in him than the bankrupt had. But is this right of action within the meaning of the word "property" in this section? It is clear from the statute itself that some kinds of property are not saleable, *e.g.* half-pay, which is not assignable by the common law, and the statute recognises this character, for by sections 89 and 90 special provision is made with regard to it.

[JAMES, L.J.—Half-pay is not a *chose in action*.]

Then section 88 deals specifically with ecclesiastical benefices, which shews that certain things *prima facie* within the definition of property do not vest in the trustee.

There is a clear and distinct assignment in words upon the face of the deed of a lawsuit.

By section 25, sub-section 3, the trustee is himself empowered "to bring or defend any action, suit . . . relating to the property of the bankrupt." That might be construed as meaning proceedings which relate to what was the bankrupt's property, and to recover the property which passed out of him.

[JESSEL, M.R.—If the trustee has not got it he cannot bring it under the 25th section.]

There is nothing in the Act which repeals the rule of public policy prohibiting the sale of a suit. The danger would be greater if the trustee were allowed to sell a claim to set aside transactions by the bankrupt, which he had entered into under his solemn instrument, than that which exists and has caused the rule that no person shall assign a claim to upset a transaction which upon the face of it appears to divest him of property. Webster could not have brought this action himself to set aside on the ground of his own fraud the deed which he has executed. The trustee would be tempted to invite persons to buy up such rights as these, and then we should have after bankruptcy persons who might be hostile

to the bankrupt—disappointed creditors—anxious to bring a lawsuit to harass some other person who had taken the property of the bankrupt previously.

The power conferred by the Act on the trustee to sell, is a power to sell only that which by law is saleable, and without the assistance of the Court, as if he had been the owner. The words were only inserted to facilitate the realisation of the estate.

We submit that as a trustee can sue on behalf of the creditors—has a right to sue with their support—this is not a right which he can sell to the first comer—to anyone who is anxious to bring an action.

*Mr. Napier Higgins, Mr. Winslow and Mr. A. a' B. Terrell*, for the respondent, were not called upon.

JESSEL, M.R.—The first proposition is, that Mr. Webster, the bankrupt, could not himself have conveyed or assigned this right or thing in action. Of course I am going to assume that he could not; but without intending for a moment to decide that he could not. It might be proved that he was the owner of the equity of redemption, and he can only establish his right to the equity of redemption by setting aside the deed. However, I will assume for this purpose that Mr. Webster could not assign the right of action.

Now the word "property" as defined by the 4th section of the statute means and includes certainly things in action. The trustee obtains, under the 17th section, on his appointment the "property." The words are, "It shall nevertheless pass to and vest in the trustee appointed," and he gets the property in no other way.

The first question to be decided is, Does he get such a right of action under the 17th section? I should say it is quite clear that he does. It would be impossible to hold that it remained vested in the bankrupt so that he could, after his discharge, recover the estate for his own benefit.

Therefore the word "property" vests it in the trustee, and now it is in the trustee. It is in the trustee by a kind of transfer: first it is in the registrar, and then in the trustee—which for this purpose I assume could not have taken place

*Seear v. Lawson, App.*

at law—that is, it is by virtue of the statute only that such a right of action vests in the trustee.

Then we have this, that the trustee may sell. The words of the 25th section are, "To sell all the property of the bankrupt including," &c.

It is suggested that "property" in the 25th section is to have a different meaning from property in the 17th section. I cannot see why. It is the same word and under the same definition clause. If the trustee gets a right of action, why is he not to realise it? The proper office of the trustee is, to realise the property for the sake of distributing the proceeds amongst the creditors. Why should we hold as a matter of policy that it is necessary for him to sue in his own name? He may have no funds, or he may be disinclined to run the risk of having to pay costs, and to delay the winding-up of the bankruptcy for the time which must elapse from the commencement to the end of the litigation. It seems to me that if you consider these things it would be *a priori* probable that he would be entitled to sell this right of action when he has got it, but I prefer to rest my decision upon the plain words of the statute. The words are "all the property," and it does not appear to me that we have any right to exclude that which is included by the definition clause—which has passed to the trustee under the 17th section—from the plain provision of the 25th section.

I may mention that there is the 4th sub-section of the 25th section which points in the same direction, and that is the power given to the trustee to do certain things with the sanction of the committee of inspection—"make such compromise or other arrangement as may be thought expedient with respect to any claim arising out of or incidental to the property of the bankrupt." Therefore, again, it appears to me that he must have a right to compromise such an action as this; and the policy of the law being to make one single transfer, so to say, from the bankrupt to the purchaser for the purpose of distributing the property of the bankrupt amongst his creditors, we should be infringing what appears to me the plain terms of the Act of Parliament if

we were to attempt to engraft upon it such an exception as is suggested by the appellants.

Therefore it appears to me that the appellant has failed, and that the order of the Vice-Chancellor is right.

JAMES, L.J.—I am entirely of the same opinion. Whatever was vested in the trustee, it seems to me the trustee was entitled by Act of Parliament to sell; and he is expressly authorised by the Act of Parliament to sell, instead of incurring the risk of litigation in his own name and at his own expense. Supposing this were a thing which never was in Mr. Webster at all—supposing this right were a right which was never in Webster at all—supposing he had the right derived through the assignee by reason of the deed being a fraud upon the creditors, between Webster and the assignee—that would have been equally saleable by the trustee as part of the assets and property which the trustee was to get in for the benefit of all the creditors. Although I agree with the Master of the Rolls that we have to decide this question upon the assumption that such a right as this could not have been assigned by Mr. Webster himself, I am at the same time by no means prepared to assent to that assumption.

BRETT, L.J.—Assuming this to be a mere right to bring an action, it seems to me that it could not pass to the trustee except by some enactment in the Bankruptcy statute. I think it did pass to the trustee, and Sir Henry Jackson was perfectly right in admitting at first that it did, although for the purpose of giving an argument to another gentleman, he retraced that argumentative admission. It does pass, and if so, it passes by some word in the statute. What word? Under the word "property" in the 17th section. Then, if "property" in the 17th section includes this, does the phrase "all the property" in the 25th section include it? Why not? According to ordinary rules of construction we have no right to construe the same word in the same statute in a different manner or with different limitations, unless there is some rule of law which enables us to do so. What is

*Seser v. Lawson, App.*

the rule of law? It is said that it is against public policy. I do not think that that argument can be maintained, and therefore the word "property" in the 25th section must have the same signification and the same limitations as the word "property" in the 17th section; and, if so, it includes this right to bring an action.

*Appeal dismissed with costs.*

Solicitors—H. W. Chatterton, for plaintiff;  
G. S. & H. Brandon, for defendant.

[IN THE COURT OF APPEAL.]

JAMES, L.J.  
BAGGALLAY, L.J. } *In re JONES; ex parte*  
BRAMWELL, L.J. } FARDON'S VINEGAR  
1880. } COMPANY.  
April 22. }

*Practice—Appeal out of Time—Costs of Affidavits filed by Respondent.*

When a respondent to an appeal intends to take the objection that it is out of time, he ought to communicate his intention at once to the other side.

When an appeal is dismissed on the ground that it is out of time, the respondent will not be allowed the costs of affidavits filed by him after the appeal was set down.

On this appeal being called on,

Mr. Underhill and Mr. R. V. Williams, for the respondent, took the preliminary objection that the appeal was out of time.

Mr. E. O. Willis, for the appellants, admitted that the objection was well-founded, but submitted that the appellants ought not to pay the costs of the affidavits filed by the respondent after the appeal had been set down.

JAMES, L.J.—The additional costs occasioned by the evidence of the respondent—that is, the costs of the affidavits filed by him since the appeal was set down—will be disallowed. Where the

objection is to be taken that an appeal is out of time, it should be immediately communicated to the other side.

BAGGALLAY, L.J., and BRAMWELL, L.J., concurred.

Solicitors—Tippetts, Son & Tickle, agents for E. Eaden, Birmingham, for appellants; Llewellyn, Ackrill & Hammack, agents for E. Tennant & Co., Hanley, for respondents.

[IN THE COURT OF APPEAL.]

JAMES, L.J.  
BRETT, L.J. } *In re SHAND; ex parte*  
COTTON, L.J. } CORBETT.  
1880. }  
Feb. 19. }

*Bankrupt Firm—Lease vested in Partners—Disclaimer by Trustee of Joint and Separate Estates—Lessor's Right of Proof for Damages—The Bankruptcy Act, 1869, ss. 23, 37.*

Four partners took a lease of the partnership premises and entered into the usual joint and several covenants of lessees. One partner died. The three survivors carried on the business, and became bankrupt. The trustee, who was trustee both of the joint estate of the firm and the separate estates of the three partners, disclaimed the lease. The lessor claimed under sections 37 and 23 of the Bankruptcy Act to prove against the joint and separate estates for damages for loss of rent and dilapidations:—Held, first, that section 37 only applied to proofs under contracts, and therefore did not apply to the present case, which was a statutory right of proof under section 23 for the injury caused by the disclaimer; second, that as the trustee who disclaimed was trustee as well of the separate estates as of the joint estate of the partners, and the disclaimer released each of them from his liability under his separate covenant, there was a right of proof for the injury against the separate estates.

This was an appeal from the decision of Mr. Registrar Pepys, acting as Chief Judge.

In the year 1864, the four partners in

*In re Shand; ex parte Corbett, App.*

Shand & Co. took a lease for fourteen years of No. 23, Rood Lane, in London, where the partnership business was being carried on, and entered into the usual lessees' joint and several covenants to pay the rent reserved and perform the covenants contained in the lease.

One partner afterwards died, and the three survivors continued to carry on the business.

On the 12th of August, 1878, the firm was adjudicated bankrupt, and the same person was appointed trustee of the joint estate of the firm and of the separate estates of the partners.

In August, 1879, the trustee disclaimed the lease, and thereupon C. Corbett, the lessor, tendered a proof against the joint and separate estates for damages, for loss of rent and dilapidations.

The trustee admitted the proof against the joint estate under section 37 of the Bankruptcy Act, 1869, but contended that the lessor had no right of proof against the separate estates.

The Registrar affirmed the decision of the trustee.

The lessor appealed.

*Mr. H. A. Giffard (Mr. Higgins with him), for the appellant.*—The lessor is entitled under sections 37 and 23 to prove against the joint and separate estates—

The Bankruptcy Act, 1869, s. 37;

*Ex parte Honey*, 41 Law J. Rep. Bankr. 9; Law Rep. 7 Chanc. 178;

*Ex parte Stone*, 42 Law J. Rep. Bankr. 731; Law Rep. 8 Chanc. 914.

He is not bound to elect as to against which he will prove, but if he has the right to elect he is excluded from exercising it by the order of the Registrar.

[*CORRON, L.J.*—Does not section 37 only apply to contracts made by partners as such? *JAMES, L.J.*—It appears to me that your only right of proof, if any, is against the separate estates under section 23.]

If your Lordships hold that there is a right of proof against the separate estates, that will satisfy the lessor, as one of the separate estates is solvent; but it is said that because the trustee is trustee

of the joint estate (although he is also trustee of the separate estates), therefore the proof must be against the joint estate alone. But the lessor has been deprived of his remedies under the lease against the lessees jointly as a firm and against each of them separately as individuals under their covenants. He is, therefore, at any rate, entitled to damages against each of them—

*Ex parte Blake*, Law Rep. 11 Ch. D. 572.

*Mr. J. Pearson and Mr. Finlay Knight*, for the trustee.—The only question is whether under section 23 the lessor has a right of proof against the separate estates. The disclaimer of the trustee operated as a surrender of the lease. By the surrender the lease is gone and the covenants are gone with it. The lessor, therefore, cannot sue on the covenants, and his claim is not a claim for damages under the covenants, but a claim under the statute for damages caused by the surrender, and therefore he can only get what the statute gives him, namely, a right of proof against the joint estate—

*Smyth v. North*, 41 Law J. Rep. Exch. 103; Law Rep. 7 Exch. 242.

Further, the proof is for damages caused by the surrender which was the act of the trustee. That trustee must be the trustee of the bankrupt to whom the lease belonged. Here the lease belonged to the firm and was held by the partners jointly for the firm, and therefore the only remedy could be against the estate of that bankrupt to which the lease belonged, and that here is the joint estate of the joint bankruptcy.

*Mr. Giffard in reply.*—The lease was vested in the trustee of the bankrupts as part of their estates, and the result of the disclaimer was to release the bankrupts' estates from the onerous covenants of the lease. If the lease had been beneficial it would be vested in the trustee for the benefit of that bankrupt who would be entitled to the surplus assets of the firm. The machinery of the section is to relieve a bankrupt or bankrupts, as the case may be, and the rational construction of the section is that it should be so read.

*In re Shand; ex parte Corbett, App.*

JAMES, L.J.—This 23rd section is really one of great difficulty, as are all the sections of the Act which give to trustees power to interfere with the rights of lessors and others, but I think we can see our way to decide in accordance with the justice and common sense of the matter.

Of course we start with this fact, that the trustee wants to get rid of the lease, that it is a *damnosa hereditas*, and, therefore, it never could have been, for any practical purpose, any part of any joint or separate estate. It was in truth nothing but a liability, but, under the operation of this section, the trustee disclaims the liability so as to put an end to the lease as between the lessor and the lessees. Now independently of the bankruptcy law, whose lease was it that he was disclaiming? It was not the lease of the firm, because there is no such thing as a firm known to the law. The firm as *cestuis que trust* might have been beneficial owners of the lease, but the legal estate in the lease was vested in three joint tenants, A., B. and C., who happened to be in business together, and who unfortunately happened to become bankrupt. The trustee, who is the trustee of the joint estate as well as of the separate estates, is the trustee of the property of A., B. and C., and he is authorised, although he may have done some act which under the old law would have bound him to elect to take the lease, to disclaim it. He is authorised to release the bankrupts from all the liability under which they would have been if the lease had not been surrendered. Then he, under that statutory power, surrenders the lease against the will of the lessor, and the lessor is obliged to accept the surrender. For whom is he surrendering it? He is surrendering it for the three joint tenants, whose lease it was; he is surrendering it for them and for each of them. Each of them was possessed of the lease *per my et per tout*. That being so, the Legislature has said, "You may, on behalf of those persons, surrender the lease entirely and put an end to it as between the lessor and the lessee." The lessor has certain remedies against the lessees, but the Legislature

says to him, "You may, instead of those remedies, prove against the estate of the bankrupt." Of course that word "bankrupt" may mean plural or singular or plural and singular, according to the context. The 23rd section gives the lessor a right of proof against the estate for the damage sustained. It is not very much that the section gives him, but it does give him a right of proof for the amount of the damage sustained. Against whom is he to prove? He is to prove against the bankrupt, whose trustee has disclaimed. It seems to me that, in this particular case, no question of joint and separate estate can arise, because there is no joint estate of joint contractors so as to bring it within the 37th section. There were originally four persons who covenanted jointly, but there is now no joint estate of those four. How the case would have stood if the three bankrupts had covenanted jointly it is not necessary for me to say (1). Here you have the distinct liability of each of the three several persons on their separate covenants, and that liability has been put an end to by the act of the trustee. The act of the trustee has enured to the injury of the lessor. The lessor has a proof. Against whom? It seems to me it must be against the estates of the persons upon whose behalf and for whose benefit the landlord has been made to endure this injury; that is to say, he is entitled to prove against the separate estate of each of the three persons. That, as it appears to me, would have been the proper order for the Registrar to have made, and no proof ought to have been admitted against the joint estate.

BRETT, L.J.—It seems to me there is no occasion to give any opinion upon the 37th section at all, and that the whole matter depends on the 23rd section.

(1) Is there not some misapprehension as to this part of the case? As to the effect of the ordinary joint and several covenants, see *Jarm. Conv.* by Bythewood, 2nd ed. vol. ii. 609; vol. i. 502. The joint liability on the covenant appears to survive, and the only additional effect of naming any three, two or one of the covenantors in the lien part is to enable the covenantee to sue any, without joining all, of the surviving covenantors. —*Eq. Ed. Law J. Rep.*

*In re Shand; ex parte Corbett, App.*

In my view of the matter it is not absolutely material to decide whether there could have been any right of proof against the joint estate, because I am of opinion that, at all events, there is here a right of proof against the separate estate. In this case the joint estate is bankrupt, and each of the separate estates is bankrupt.

There is one trustee in respect of all those estates. He is trustee of all and of each of them. That trustee might by virtue of the statute, if he had chosen to keep the lease, have acquired it, and if so, he would have acquired it as property coming to him as trustee. Therefore that lease being in such a condition that it may become his property, if he chooses to take to it, he can only take as trustee in bankruptcy. In other words, it comes to him by virtue of the bankruptcy and by virtue of the statutes. But that trustee may, by writing under his hand, disclaim the lease; and he does so. Thereupon the lease is for all purposes other than the remedy given by the 23rd section, deemed to have been surrendered. But it is not a surrender accepted by the lessor. It is a surrender made in spite of and against the will of the lessor, however much he might have desired to insist upon the continuance of the lease. Then by the act of the trustee, which act he is entitled to do by virtue of the Bankruptcy Act and by that alone, the lessor is injured—that trustee being the trustee of each and every one of the bankrupt estates. How has he injured the lessor? The covenants in the lease, I assume for the moment, were binding upon the three bankrupts jointly; but they were also binding upon each of them separately. Then, by this surrender, unless some remedy is given by the section, the lessor would lose any claim against the three jointly, but he would equally and also lose any claim against each of the three separately. Therefore, by the act of the trustee the lessor, against his will, is injured in respect of his claims against all the bankrupts and against each of them. Then, that being so, the latter part of the section deals with the injury which has been suffered by the lessor. It says—“Any person injured by the operation of

this section shall be deemed a creditor of the bankrupt to the extent of such injury, and may accordingly prove the same as a debt in the bankruptcy.” It seems to me most undoubtedly that, whichever view you take of it, the lessor is a person who has been “injured by the operation of the section”—the largest words which can possibly be used. He is not injured by anything else; it is only “by the operation of the section” that he is injured; and that being so, it says he “shall be deemed a creditor of the bankrupt to the extent of such injury.” Now what is the extent of his injury? The extent of his injury is, first of all, the loss of any claim that he may have had on the joint estate. But that is not the whole extent of his injury. He is injured with respect to his claim against each of the separate estates. The words of the section are “to the extent of such injury, and he may accordingly prove the same as a debt under the bankruptcy,” that is the bankruptcy in which the trustee is trustee, and he is trustee in the joint bankruptcy and also in each separate bankruptcy. It seems to me that the case, with regard to the separate estates, is within the very words and certainly within the spirit of the latter part of the section. I think also that there is a general rule of construction of statutes which is applicable to this matter, namely, that unless you are obliged to do so you must not suppose that the Legislature intended to do a palpable injustice; and it seems to me that in this case, where the claim is for injury to a lessor against his will, it would be palpable injustice to deprive him of a remedy against the separate estates just as much as it would be to deprive him of a remedy against the joint estate. I am of opinion, therefore, that there is a right to prove against the separate estates.

COTTON, L.J.—In this case a proof has been admitted against the joint estate of the bankrupts, and the question is, ought it to be admitted against the separate estates or against the joint estate? It was contended that it should be admitted against both joint and separate estates, and section 37 was relied on for that pur-

*In re Shand; ex parte Corbett, App.*

pose. In my opinion section 37 is inapplicable. That section, whatever might be the result under such a covenant, in my opinion only applies to proofs under contracts. What we have now to deal with is a proof, not under any contract entered into by any persons all of whom have become bankrupt, but under the right given in the latter part of the 23rd section, which says—"Any person injured by the operation of this section shall be deemed a creditor of the bankrupt to the extent of such injury, and may accordingly prove the same as a debt under the bankruptcy." That section is the only part of the Bankruptcy Act with which, in my opinion, we have to deal.

Now, first of all, I will consider what is the construction which is to be put on this section. It certainly gives rise to a great deal of difficulty, because it requires us to deal with things which do not exist as if they did exist. Now the right of proof is given to the person who is injured by these words "shall be deemed a creditor." It does not proceed upon any claim he had as a creditor, but it says that he shall be deemed to be a creditor to the extent of the injury he has suffered, and the question is whether he had any claim against the joint estate or the separate estate independently of the operation of this section. In my opinion that does not determine as against whom the right to prove is given. The person injured is to be "deemed to be a creditor of the bankrupt to the extent of such injury, and may accordingly prove the same as a debt under the bankruptcy." It appears to me that the lessor's injury consists in his being deprived of the lease and of certain consequences accruing by the existence of the lease. That is the extent of his injury. But how is he to prove and against what he is to prove must depend upon the correct meaning of this part of the section. Now I think we must look to the earlier part of the section. Power is given to the trustee in the bankruptcy to disclaim, and the effect of that is to be this, that the lease is to be deemed to have been surrendered as at the date of the adjudication. I think that the fair construction of the section, before we come to the particular circumstances,

is this, that when a trustee has vested in him, as trustee of a bankrupt or as trustee of bankrupts, a lease, then, they being the persons who could have surrendered if there had been no bankruptcy, the trustee of the person or persons in whom the lease is vested is the person who has the power given to him of disclaiming, and whose act of disclaimer binds the Court to deal with the matter as if in fact there had been a surrender of the lease.

Now apply that to the present case. Here there are three persons who are bankrupts, and the trustee was appointed trustee of their estates. At the time of the bankruptcy a lease was vested in those three persons as joint tenants. The trustee in fact never had the lease at all, though it would have vested in him if he had accepted it; but it would have vested in him as the trustee of those three persons, and as such trustee he has the power under the 23rd section of disclaiming the lease, and the disclaimer is to have the same effect as if there had been a surrender of the lease at the date of the adjudication. That being so, I think we may fairly construe the latter part of the section as giving a right of proof against the estates of those three persons in whom the lease was vested, and whose trustee has in fact exercised the power of disclaimer, which would give the right of proof. It is true that a difficulty is caused by the first part of the section, which commences in this way—"When any property of the bankrupt acquired by the trustee under this Act," and so on. That would seem to point to property acquired by the trustee for the purpose of distribution amongst the creditors of the bankrupt, which in this particular case would no doubt be the joint creditors; but then the whole of the introductory part of the section would be almost unintelligible, because the very hypothesis of the section is that the trustee never does acquire the property. I take it, therefore, that what it really means is this, that when there is a right or property of the bankrupt which but for that section would have become vested in his trustee on certain onerous terms, on behalf of the person in whom that

*In re Shand; ex parte Corbett, App.*

property is vested the trustee may disclaim, and then the right of proof by the injured person would arise; and, in respect of a joint and several covenant on which bankrupts were liable, it would arise against the estates of those persons as trustees for whom the trustee would have taken the property if he had chosen to accept. It is true that if he had done so he would have to dispose of the property for the purposes of the joint estate, but really he is not the trustee of the firm, but he is the trustee of the individuals and of the property of the three bankrupts. Separate accounts have to be kept for the purpose of ascertaining how the property is to be distributed in payment either of the joint or of the separate creditors. Although I agree that this section is a very difficult one to construe, and although I have had much doubt about it, I think the reasonable construction is that the right of proof is given as against the estates of those persons in whom the

lease was vested and whose trustee disclaims. That I think is the fair construction.

JAMES, L.J.—I forgot to say that I think the construction may be aided by this consideration, that it is a very common thing indeed when leasehold property is acquired solely for the purposes of a firm for the lease to be taken in the name of the senior partner in the firm. Beyond all question, in such a case there would be a right of proof against the senior partner's estate.

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Solicitors—Jenkinson & Ollivers, for appellant;  
Harries, Wilkinson & Raikes for respondent.

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— *validity of: statement of consideration: explanation and attestation by solicitor: bills of sale act*—The business that is by the Bills of Sale Act required to be stated in the affidavit, is that by which the grantor of the bill of sale ordinarily seeks to make his livelihood, in respect of which he contracts debts, and which is his substantial, as distinguished from any ancillary employments which he may carry on in addition for amusement or otherwise. The Act of 1878, section 10, sub-section 1, does not require that in point of fact the effect of the bill of sale should be explained by the attesting solicitor to the grantor, but only that the solicitor should state that he had done so; and the neglect by the solicitor to perform his duty of giving the explanation does not avoid the bill of sale (either as against the grantor himself or any other person). The consideration which the Act requires to be stated in the deed is the real consideration as between the grantor and grantee—that which would have been properly

stated in the deed independently of the Act; but the Act does not require every collateral bargain or stipulation connected with the advances to be set out. *Ex parte the National Mercantile Bank; in re Haynes* (App.), 62

**BUILDING CONTRACT**—*bankruptcy: proviso that materials shall become property of landowner on builder's bankruptcy: validity*—A building contract contained a stipulation that in the event of the builder becoming bankrupt or in solvent, all materials, plant, chattels, &c., on the ground, which should not have been actually demised to the builder (under a previous clause, by which the landowner agreed to grant to the builder leases of the houses on completion), should become absolutely forfeited to the landowner. Power was also given to the landowner, in such an event, to enter and sell the materials, &c. The builder having filed a petition for liquidation, and building materials, &c., remaining on the land at that date,—*Held*, that the agreement above set out was not void, as being contrary to the policy of the bankrupt laws, but was perfectly lawful, and that the landowner was entitled to the materials. *Ex parte Meads; in re Harrison*, 47

**COLLUSION**. See Bankruptcy.

**COMPTROLLER'S REPORT**—*bankruptcy: locus standi of bankrupt and creditor to appeal from order or refusal of judge on that report: person aggrieved: bankruptcy act: bankruptcy rules*—Where the Comptroller in bankruptcy has made a report to the Court, pursuant to the 57th section of the Bankruptcy Act, 1869, and the 251st of the Bankruptcy Rules, in reference to the conduct of the trustee, neither the bankrupt, nor any of his creditors, has any *locus standi* as a "person aggrieved" to appeal from a refusal of the Court to make an order on that report. The Comptroller alone can appeal. But

if the trustee has been guilty of any misfeasance, the bankrupt, or any of his creditors, may apply to the Court, under section 20; and, if dissatisfied with the order made by the Court may then appeal against it. *Ex parte Ditton; in re Woods* (Law Rep. 11 Ch. D. 56), explained. *Ex parte Sidebotham; in re Sidebotham*, 41

CONSIDERATION. See Bill of Sale.

CONTEMPT—*notice of injunction by telegram: breach of injunction: communication of notice*—Notice by telegram of an order of the Court may, under certain circumstances, be sufficient to render a person disobeying the order liable to committal for contempt; but as the liberty of the subject is to be affected, those who allege that notice in fact has been received must prove it beyond doubt. *Ex parte Smith; ex parte Langley; in re Bishop* (App.), 1

A sheriff's officer receiving notice by telegram of bankruptcy proceedings, and a *fortiori* of an order founded upon them, if he has any doubt as to its authenticity, should communicate either with the Bankruptcy Court or the sheriff's agent in London, to find whether the telegram was correct. *Ibid.*

The auctioneer should, under similar circumstances, communicate with the person under whose instructions he sells. *Ibid.*

The doctrine of notice through the medium of an agent cannot apply to the case of a sheriff's officer who has no actual notice of an order, and consequently a sheriff's officer cannot be committed for contempt when he has not received notice of the order of the Court, although such notice has been received and the order disobeyed by his subordinate. *Ibid.*

A London solicitor who obtains an order of Court restraining a sale should not telegraph direct to the auctioneer or sheriff's officer, but should telegraph to a solicitor at the place as agent for him, and instruct him to go and give notice of the order. The person affected by the order would, if such a course were adopted, have the benefit of the personal responsibility of an officer of the Court. *Ibid.*

COSTS—*costs in the high court: set-off: practice*—The Court of Bankruptcy will not allow costs incurred in any Division of the High Court to be set off against costs in Bankruptcy, although such costs be incurred in proceedings between substantially the same parties as are litigating in Bankruptcy. *In re Adams; ex parte Griffin* (App.), 28

DEBTOR'S SUMMONS—*bankruptcy act, 1869: application to dismiss: security: disputed debt: Rules of Supreme Court, 1875, Order III. rule 6; Order XIV. rules 1, 4*—Where a debt is *bona fide* disputed, or the alleged debtor is

solvent, a proceeding by way of debtor's summons is improper. *In re Sewell; ex parte Sewell* (App.), 15

Where a debt is not disputed, the proper way to proceed is by specially indorsed writ, under Order III. rule 6, and Order XIV. rules 1, 4, of the Rules of Court, 1875. *Ibid.*

Proceedings by way of debtor's summons ought to be taken only under such circumstances as must necessarily lead to bankruptcy proceedings. *Ibid.*

DEEDS. See Jurisdiction.

DISCHARGE. See Fraudulent Debt.

DIVIDEND, POSTPONEMENT OF. See Liquidation.

ELEGIT. See Equitable Execution.

EQUITABLE EXECUTION—*judgment creditor: elegit not issued: receiver: bankrupt debtor: secured creditor: the bankruptcy act*—Where a judgment debtor's interest in land is of an equitable nature, and a writ of *elegit*, if issued at the instance of the judgment creditor, will result in nothing, the latter need not issue the writ before taking proceedings to obtain equitable execution. In such a case an order appointing a receiver of the rents and profits of the land at the suit of the judgment creditor, in an action by him to enforce payment of the judgment debt, is a delivery in equitable execution by virtue of a lawful authority within 27 & 28 Vict. c. 112, although the receiver may not perfect his appointment until afterwards; and the judgment creditor is thereby constituted a "secured creditor" within subsection 5 of section 16 of the Bankruptcy Act, 1869. *In re Watkins; ex parte Evans* (App.), 7

EVIDENCE ON APPEAL. See Proof.

EXECUTOR. See Set-off.

FORFEITURE. See Building Contract.

FRAUDULENT DEBT—*bankruptcy: liquidation by arrangement: discharge of liquidating debtor: close of the liquidation: bankruptcy act: debtors act*—A liquidating debtor who has obtained an order for discharge, may, even though the liquidation be still pending, be sued for a debt incurred fraudulently, and this liability is not affected by section 15 of the Debtors Act, 1869. Whether liquidations by arrangement are excluded from the scope of section 15 of the Debtors Act, 1869—*Quære. In re Chatterton; ex parte Hemming* (App.), 17  
Semble, that section refers to arrangements made by a bankrupt with his trustees, which are

made valid and binding on creditors under section 28 of the Bankruptcy Act, 1869. *Ibid.* The time from which dates the debtor's right to after-acquired property is also the time when the right of a creditor to take proceedings against the debtors' person or property in respect of a debt incurred by fraud accrues. *Ibid.*

**JURISDICTION—court of bankruptcy: fraud on creditors: bankruptcy act**—Mortgages executed by the bankrupt more than twelve months before the adjudication were impeached by the trustee in the bankruptcy, and the County Court Judge directed certain issues to be tried by a jury. The jury found that the mortgages were executed with intent to defeat and delay creditors, and the County Court Judge ordered the deeds to be delivered up to be cancelled. On appeal to the Chief Judge, the Court took the objection that as the deeds could not be impeached by virtue of the Bankruptcy Law, the Court of Bankruptcy had no jurisdiction, and discharged the order of the County Court Judge without costs. *In re Harrison; ex parte Harrison*, 30

**JURISDICTION OF THE COURT OF APPEAL—bankruptcy in: pending appeal to house of lords: re-hearing to introduce fresh evidence: the bankruptcy act**—The Court of Appeal in Bankruptcy will correct accidental slips, mistakes or omissions made in drawing up its orders. It has also jurisdiction, under section 71 of the Bankruptcy Act, 1869, to rehear upon fresh evidence, and to alter, vary or rescind its orders; but it will not rehear an order under appeal to the House of Lords, merely to insert in the order, for the purposes of such appeal, evidence that was not before it. *In re Hooper; ex parte Banco de Portugal* (App.), 21

*Semble*, a re-hearing upon fresh evidence may be granted, notwithstanding a pending appeal to the House of Lords, but only under special circumstances. *Ibid.*

**LIQUIDATION—proof by secured creditor without realising or valuing securities: debt provable in bankruptcy: declaration of dividend: duty of trustee to make a reserve**—A trustee on declaring a dividend is not bound to make a reserve in respect of a proof by a secured creditor who has not realised or put a value on his security. In such a case the creditor has no debt provable until he has realised or valued his security; and if, by force of circumstances, he is unable so to do before a dividend is declared, his proper course is to apply to the Court, under section 72, to postpone the dividend, and the Court has jurisdiction to make such order as the justice of the case may require. *In re Lee; ex parte Good* (App.), 49

— creditor's application to examine debtor and witnesses: the bankruptcy act: bankruptcy rules]  
—Where a trustee declines to examine the

debtor or other persons under section 96 of the Bankruptcy Act, and a creditor applies for leave so to do, the latter must make out a *prima facie* case, or satisfy the Court that there is reasonable probability that the examination will result in some benefit to the estate. *In re Wilson; ex parte Nicholson* (App.), 68

— ARRANGEMENT. See Fraudulent Debt.

**LOCUS STANDI.** See Comptroller's Report.

**MEETING OF CREDITORS—bankruptcy act: bankruptcy rules: present at meeting: present but not voting at general meeting of creditors**—At a meeting convened under rule 306 of the Bankruptcy Rules, 1870, certain resolutions were passed by a statutory majority removing a trustee. At this meeting S., who was a creditor for a small amount and also proxy for another large creditor, attended. The proofs for his own and his principal's debts had been put in and filed some years previously at the first meeting. He stayed throughout the meeting but did not sign the resolutions, and stated that he did not intend to take any part in the meeting. Registration of the resolutions was objected to on the ground that S. must be taken to have attended on the authority of *Ex parte Orde*; in *re Horsley* (40 Law J. Rep. Bankr. 60; Law Rep. 6 Chanc. 881), he having been present and not having withdrawn the proof. If S. had been counted as present on behalf of his principal, the resolutions would not have been passed by the statutory majority:—*Held*, on appeal from the Registrar, that the resolutions were properly registered, that even if the principle of the above case would have applied to S. in his own character as creditor (the smallness of his debt rendering the decision unnecessary), it could not apply to the case of his principal as being a person "present by proxy," and that therefore the principal of S. in spite of S.'s actual presence could not be said to be present at that meeting, S. having done no act to shew that he intended to be present there on her behalf. *Ex parte Orde* distinguished. *Ex parte Evans; in re Baum* (App.), 25  
*Quere*, whether the principle of that case applies to any meeting held after the registration of liquidation or composition proceedings. *Ibid.*  
The fact that some of the creditors signing the notice summoning the meeting under rule 306 and voting on the resolutions at the meeting, had previously sold their debts to another creditor was held not to constitute an objection to the notice or to the resolutions. *Ibid.*

**PARTNERS—bankrupt firm: lease vested in: disclaimer by trustee of joint and separate estates: lessor's right of proof for damages: the bankruptcy act, 1869, ss. 23, 37**—Four partners took a lease of the partnership premises and entered into the usual joint and several cove-

nants of lessees. One partner died. The three survivors carried on the business, and became bankrupt. The trustee, who was trustee both of the joint estate of the firm and the separate estates of the three partners, disclaimed the lease. The lessor claimed under sections 37 and 38 of the Bankruptcy Act to prove against the joint and separate estates for damages for loss of rent and dilapidations:—*Held*, first, that section 37 only applied to proofs under contracts, and therefore did not apply to the present case, which was a statutory right of proof under section 23 for the injury caused by the disclaimer; second, that as the trustee who disclaimed was trustee as well of the separate estates as of the joint estate of the partners, and the disclaimer released each of them from his liability under his separate covenant, there was a right of proof for the injury against the separate estates. *In re Shand; ex parte Corbett* (App.), 74

**PARTNERSHIP.** See Proof.

**PRACTICE—appeal from county court: time for appealing: bankruptcy rules, 1870, rule 143]**—The twenty-one days within which an appeal from the decision of a County Court Judge is to be entered, are to be reckoned from the date when the order is pronounced, and not from the date when it is settled and signed. *In re Greaves; ex parte Whitton*, 31

**— appeal out of time: costs of affidavits filed by respondent]**—When a respondent to an appeal intends to take the objection that it is out of time, he ought to communicate his intention at once to the other side. When an appeal is dismissed on the ground that it is out of time, the respondent will not be allowed the costs of affidavits filed by him after the appeal was set down. *In re Jones; ex parte Fardon's Vinegar Co.* (App.), 74

**PROOF, DOUBLE—bankruptcy act: firms composed of the same members: administrations in two countries: admission of evidence not before court below]**—Two persons carried on business, under one firm, as wine exporters in Portugal, and under another as wine merchants in London. Bills were drawn by the Portuguese firm on, and accepted by the English firm. The English firm became bankrupt, and before the adjudication proceedings in insolvency were taken in Portugal, under which the property there was administered and divided exclusively among the Portuguese creditors. One of these creditors, who had received a dividend on bills drawn by the Portuguese firm, then sought to prove in the English bankruptcy in respect of the same bills against the English firm as acceptors:—*Held*, that he could only do so on condition of bringing into account the dividend received in Portugal. The words, "in whole or

in part composed of the same individuals," in section 37 of the Bankruptcy Act, 1869, do not apply to the case of two firms consisting entirely of the same individuals, but to the case where all the members of one firm form part of another firm. *Selbrig v. Davies* (2 Dow. 230; 2 Rose, 97, 291) and *Ex parte Wilson* (41 Law J. Rep. Bankr. 46; Law Rep. 7 Chanc. 490) followed. Admission refused of evidence which had not been used before the Court below. Observations of Lord LYNCHBURST in *Attwood v. Small* (6 Cl. & F. 232) approved. *Banco de Portugal v. Waddell* (H.L.), 33

**RECEIVER.** See Equitable Executor.

**RE-HEARING.** See Jurisdiction.

**RESIDUARY LEGATEE.** See Set-off.

**SECURED CREDITOR.** See Liquidation. Sequestration, Writ of. Writ of Elegit.

**SEQUESTRATION, WRIT OF—judgment creditor: chose in action: secured creditor: bankruptcy act]**—A judgment creditor issued a writ of sequestration and served it upon executors holding in their hands a legacy payable to the judgment debtor, who shortly afterwards went into liquidation:—*Held*, that the creditor, as against the trustee in liquidation, was not a secured creditor within sub-section 5 of section 16 of the Bankruptcy Act, 1869. *Quære* whether the judgment creditor, if he had obtained an order restraining the debtor from receiving the legacy, would have been a creditor holding a charge or lien on the debtor's property within the section. *In re Hoare; ex parte Nelson* (App.), 44

**SET-OFF—bankruptcy: mutual credit: executors' account at bank: private account of one executor being residuary legatee, at same bank]**—A. and B., executors under a will, under which A. was also residuary legatee, kept an executorship account with a bank, at which A. kept also a private separate account. The bankers stopped payment, and filed a liquidation petition, and a trustee was appointed. Previously to the stoppage the executors had paid all the debts, and funeral and testamentary expenses, and set apart securities to answer the annuities bequeathed by the will, but the executors were jointly liable for two small sums for rates and taxes, and their solicitor's bill of costs in relation to the estate. At the date of the stoppage a sum of 1,400*l.* was due from the bank on the executorship account, while a sum of 1,200*l.* was owing by A. on his separate account. A. claimed to prove in the liquidation for the difference between the two sums, as having a right to set off, as against the debt due from him, the money owing from the bank on the executorship account, on the ground

that the money on that account constituted in fact a clear net residue in which he was absolutely interested:—*Held*, that the one account could not be set off against the other, the rules of equitable set-off or mutual credit not applying, unless A. was so much the person solely beneficially interested in the balance of the joint account that a Court of equity would, without any terms or further enquiry, have obliged B. to transfer the account into the name of A. alone. *Ex parte Morier; in re Willis, Percival & Co.* (App.), 9

STATUTORY MAJORITY. See Meeting of Creditors.

TELEGRAM. See Contempt.

TRUSTEE—*sale by: in bankruptcy of right of action: property of bankrupt: champerty and maintenance: bankruptcy act: rules of court*—S., trustee in bankruptcy of W., issued a writ in an action, claiming to have a deed which had been executed by the bankrupt prior to his bankruptcy, purporting to be an absolute conveyance by the bankrupt to the defendant of the equity of redemption in certain mortgaged freehold and leasehold hereditaments, set aside, so far as it purported to be an absolute conveyance, and a declaration that the deed ought only to stand as security for the sum actually paid by the defendant. Subsequently an agreement was come to between O. and S., with the sanction of the committee of inspection, that C. should purchase all the trustee's right in the property, and a deed was executed to carry that agreement into effect. C. thereupon obtained under Order L. rule 1, an order *ex parte*, appointing him plaintiff in the place of S. On motion by the defendant in the action to discharge the last-mentioned order on the ground that the sale by S. was in reality the sale of a right to bring an action, and therefore within the rule against champerty and maintenance,—*Held* (affirming *Bacon, V.C.*), that the right to

bring the action was part of the "property" of the bankrupt within the definition of section 4 of the Bankruptcy Act, 1869. That as such "property" it was by force of section 17 vested in the trustee, and that (whether B. himself could have assigned the right or not) his trustee was by section 25, sub-section 6, empowered to sell it, and that the rule against champerty and maintenance had no application. *Sear v. Lawson. Chatterton v. Lawson* (App.), 69

TWO BANKRUPTCY PETITIONS—*second petition first heard: adjudication: collusion between debtor and second petitioner: appeal by first petitioner: "person aggrieved"*—Where two bankruptcy petitions are presented against the same debtor, and the debtor colludes with the second petitioning creditor, so that an adjudication is made on the second petition behind the back of the first petitioning creditor, the Court will, on the application of the first petitioning creditor, give him the conduct of the proceedings consequent on the adjudication. In such a case the first petitioning creditor is not a "person aggrieved," within section 71 of the Bankruptcy Act, 1869, and has no *locus standi* to appeal against the adjudication. *In re White; ex parte Mason* (App.), 56

WRIT OF "ELEGIT"—*liquidation: security: judgment: seizure: filing of petition: bankruptcy act*—Section 87 of the Bankruptcy Act, 1869, does not apply to a judgment executed by means of a writ of *elegit*. And therefore, the sheriff having under such a writ seized goods of a debtor before he committed the act of bankruptcy, though the inquisition of the jury as to the value of the goods was not completed until after the act of bankruptcy,—*Held*, that the execution creditor held a security within the meaning of sections 12 and 16 (sub-section 5), and was not deprived of it by section 87. *In re Gourlay; ex parte Ormandy*, 23

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# THE PUBLIC GENERAL ACTS

OF THE UNITED KINGDOM OF

**GREAT BRITAIN AND IRELAND:**

PASSED IN THE

**FORTY-THIRD YEAR**

OF THE REIGN OF HER MAJESTY

## QUEEN VICTORIA

At the Parliament begun and holden at Westminster, the 5th Day of March, *Anno Domini* 1874, in the Thirty-seventh Year of the Reign of our Sovereign Lady VICTORIA, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith: Being the SEVENTH SESSION of the TWENTY-FIRST PARLIAMENT of the United Kingdom of GREAT BRITAIN and IRELAND.

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## 43 VICTORIA, 1880.

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### CHAP. 1.

#### *Seed Supply (Ireland) Act, 1880.*

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##### ABSTRACT OF THE ENACTMENTS.

1. *Short title.*
2. *Application of Act.*
3. *Powers of Guardians to borrow.*
4. *Terms of loan.*
5. *Orders for payment of loans may be made by Local Government Board.*
6. *Application of loans.*
7. *Recovery of price from purchasers.*
8. *Power of entry and inspection.*
9. *Summary recovery of price of seed.*
10. *Powers of Local Government Board where Guardians make default.*
11. *Saving for other remedies.*
12. *Repayment of loans made by the Board of Works.*
13. *Confirmation of expenditure by Guardians, and indemnity.*
14. *No electoral disability.*

An Act to enable Guardians of the Poor to borrow Money for the purpose of procuring Seed Potatoes and Seed Oats, and other Seed for Tenants in Ireland; and for other purposes.

(1st March 1880.)

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as the Seed Supply (Ireland) Act, 1880.

2. At any time after the passing of this Act, and before the thirty-first day of March one thousand eight hundred and eighty, the Local

Government Board, if satisfied that the occupiers of land in any electoral division of any union are generally unable to procure an adequate supply of seed potatoes, seed oats, or other seed, may, by order, authorise or, if they think fit, may require the Guardians of the Poor of the union to put the provisions of this Act in force in reference to such electoral division; and the Local Government Board may from time to time, by order made for that purpose, revoke or vary any such order.

The Local Government Board shall prepare, and may from time to time add to or alter, a schedule of the unions, and of the electoral divisions thereof, in which they have authorised the Guardians to put the provisions of this Act in force.

3. The Guardians of the Poor of any union scheduled for the time being may apply to the

Local Government Board for a loan for the use of any scheduled electoral division of their union. If the Local Government Board approves of any such application they shall transmit it to the Commissioners of Public Works, who may, with the consent of the Commissioners of Her Majesty's Treasury, make, out of any moneys placed at their disposal by Parliament for the purpose of loans, any loan to such Board of Guardians, on the security of any rate applicable to any of the purposes of the Acts for the Relief of the Poor which is leviable in the electoral division for the use of which the loan is made, and without requiring any further or other security.

4. Such loans shall be made without interest, and shall be repayable by the Guardians to the Commissioners of Public Works by two equal instalments, the first of such instalments to be paid on the first day of August one thousand eight hundred and eighty-one, and the second of such instalments to be paid on the first day of August one thousand eight hundred and eighty-two.

When any such loan is made all rates leviable for any of the purposes of the Acts for the Relief of the Poor in the electoral division for the use of which the loan was made shall become forthwith charged, without any deed of mortgage or other instrument being required, with the repayment by such instalments of the sum lent for the use of the division.

5. If at any time the Commissioners of Public Works in Ireland certify that any sum remains due to them from the Board of Guardians of any union on account of any loan made for the use of any electoral division for the purchase of seed, and is then payable to the Commissioners, the Local Government Board shall, by order under their seal, assess that sum on the electoral division, and shall send copies of the order to the Board of Guardians and to the treasurer of the union; and thereupon the treasurer of the union shall, out of any money then in his hands to the credit of the Guardians, or if such money is insufficient for the purpose, then out of all moneys subsequently received by him on account of the Guardians, pay over the amount mentioned in the order to the Commissioners of Public Works. The Guardians of the union shall debit the electoral division with the amount so assessed upon the division.

6. The Guardians may apply the whole or any part of the sum borrowed by them for the use of each electoral division in purchasing seed potatoes, seed oats, or other seed which the Local Government may authorise, and in defraying all expenses incurred for carriage, storage, or otherwise in providing such seed for sale. Such seed shall be

sold by the Guardians to occupiers of land and cultivators of land (not being occupiers) on the application of the occupier, and on his security, in the electoral divisions, subject to the provisions of this Act.

The Guardians may sell such seed, subject to the following provisions:

1. They may sell to any occupier of land valued at not more than fifteen pounds a quantity of seed potatoes sufficient to sow an acre, and of seed oats or other seed sufficient to sow another acre of land, "statute measure;" provided that the total cost of such seed does not exceed five pounds for any one occupier:
2. They may sell to any person who cultivates for his own use any land under a contract made by him with the tenant of the land a quantity of seed potatoes sufficient to sow a quarter of an acre of land statute measure. No such sale shall be made except upon the application of the person who is tenant of the land, and upon his agreeing to pay to the Guardians the price of the seed so sold in the same manner as if the seed had been sold to him:
3. No seed shall be sold to any occupier of land valued at more than fifteen pounds, and no seed shall be sold for less than the net price paid by the Guardians for it, including all expenses incurred for carriage, storage, or otherwise in providing such seed for sale:
4. No seed shall be sold to any person unless the Guardians, or such persons as the Local Government Board may nominate in that behalf, are satisfied that the land into which it is to be put has been properly prepared and is ready for sowing:
5. If in any case any premises in the occupation of any occupier are not separately valued under the Acts relating to the valuation of rateable property in Ireland, the Guardians may receive such evidence as they think fit as to the annual value of such premises, and such premises shall, for the purpose of this Act, be taken to be of the value which the Guardians shall determine, as if such premises had been separately valued at that amount under the said Acts.

7. Payment of the amount due to the Guardians from each person indebted to the Guardians on account of any purchase of seed, whether made before or after the passing of this Act, shall be made by two equal instalments.

For the purpose of obtaining payment of each such instalment due from each such person the Guardians shall levy such sum, where the person is rated under the Acts for the Relief of the Poor.

as part of the poor rate payable by such person, by a special rate to be added to the poor rate assessed on the tenements occupied by such person, and to be collected therewith.

Where such person is not rated under the Acts for the Relief of the Poor the Guardians shall make a special rate for the purposes of this Act, in which he shall be rated.

Every special rate made for the purpose of obtaining payment of money due from each such person shall be recoverable in the same manner and with the same remedies by the collectors of the poor rate as if it were poor rate, and shall be lodged to the credit of the Guardians with the treasurer of the union.

Provided that no person paying any such special rate shall be entitled to make any deduction on account of such payment from any rent which he is liable to pay.

The first of such special rates shall be made by the Guardians at the same time as the first ordinary rate made for the relief of the poor in the union after the first day of August one thousand eight hundred and eighty, and the second of such special rates shall be made by the Guardians at the same time as the first ordinary rate for the relief of the poor made in the union after the first day of August one thousand eight hundred and eighty-one. The first instalment payable by each person indebted shall be taken to be due on the day on which the first of such special rates is made, and the second instalment shall be taken to be due on the day on which the second of such special rates is made.

Any person indebted to any Board of Guardians on account of any such purchase of seed may pay off his debt, or each instalment of it, at any time before each such special rate is made.

8. When any seed has been sold under this Act to any person in any union, any of the Guardians of the union, or any person nominated by the Guardians or by the Local Government Board, may at all reasonable times enter into and examine any land occupied or tilled by such person, for the purpose of ascertaining whether the seed sold to such person has been properly sown by him, and may do all acts reasonably necessary for that purpose. For the purpose of facilitating such examination the Guardians shall keep a list of all the names and addresses of all purchasers of seed, and shall permit such list to be inspected by any person having authority to make such examination under this Act. If any person refuses to a Guardian or other person acting in execution of this Act admission to any land which such Guardian or person is entitled to enter or examine, or obstructs or impedes him in so entering or examining, the person so offending may be prosecuted in a summary manner, according to the provisions of the Petty Sessions

(Ireland) Act, 1851, and any Act amending the same, and on conviction shall be liable to a fine not exceeding five pounds.

9. If any person to whom any seed has been sold by any Board of Guardians before or after the passing of this Act does not properly sow such seed, the Guardians of the union may forthwith proceed to recover the price of such seed, whether the amount is more or less than two pounds, before the justices in petty sessions, in the manner prescribed by the Act passed in the session of Parliament held in the twenty-second year of the reign of Her present Majesty, chapter fourteen, and any Act amending it; and the provisions of such Act and Acts shall apply to such proceedings as if the debt sued for was under the value of two pounds.

10. If at any time it appears to the Local Government Board that the Board of Guardians of any union have made default in any respect in the execution of this Act, the Local Government Board may, if they think fit, themselves carry this Act into execution with reference to such union and the several electoral divisions thereof, and shall have for that purpose all the powers vested by this Act in the Board of Guardians of a union scheduled under this Act. In such case application for any loan may be made by the Local Government Board directly to the Commissioners of Public Works, and in other respects the Local Government Board shall be in the place and stead of the Board of Guardians so making default.

11. Nothing contained in this Act shall be taken to prejudice or affect any proceedings which might have been instituted by the Commissioners of Public Works or by any Board of Guardians for the enforcement of any contract or the recovery of any debt.

12. If at any time before the passing of this Act the Commissioners of Public Works in Ireland shall have advanced money to any Board of Guardians for the purchase of seed, the sum so advanced, or any part thereof remaining unpaid from time to time, shall be a charge upon the rates leviable on such electoral division or divisions in the union as the Local Government Board shall appoint; and such sum or part shall be repaid in the same manner as sums lent by the Commissioners of Public Works to Boards of Guardians under the authority of this Act, and the provisions of this Act relative to the repayment of loans made under the authority of this Act shall apply to such loans made before the passing of this Act.

13. If at any time before the passing of this Act any outlay shall have been made by any

Board of Guardians, with the sanction of the Local Government Board, for the purchase of seed for sale to occupiers of land or other persons qualified to purchase such seed under this Act in the union, such outlay, and all resolutions and proceedings of the board and of their officers in relation thereto, shall be ratified and confirmed and be as valid and effectual as if the outlay had been made and the resolutions and proceedings had been passed and taken under the authority and in compliance with the provisions of this Act; and all persons who have acted in any

manner in making any loan to any Board of Guardians, or in making any advance of money to the Commissioners of Public Works for the purpose of any such loan, or in making such outlay for seed, shall be released and indemnified from and against any penalties and surcharges in consequence thereof.

14. No electoral disability or loss of Parliamentary or other franchise shall be incurred by any voter who may be granted assistance under the provisions of this Act.

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## CHAP. 2.

### *Artizans and Labourers Dwellings Improvement (Scotland) Act, 1880.*

#### ABSTRACT OF THE ENACTMENTS.

1. *Short title and construction of Act.*
2. *Amendment of schedule to principal Act.*
3. *As to assessment of compensation.*
4. *Amendment of 38 & 39 Vict. c. 49. s. 5. as to the provision of accommodation for the working classes.*
5. *Definition of "Acts relating to nuisances."*

#### SCHEDULE.

### An Act to amend the Artizans and Labourers Dwellings Improvement (Scotland) Act, 1875.

(15th March 1880.)

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as the Artizans and Labourers Dwellings Improvement (Scotland) Act, 1880.

This Act shall be construed as one with the Artizans and Labourers Dwellings Improvement (Scotland) Act, 1875, (in this Act referred to as the principal Act,) and the principal Act and this Act may be cited together as the Artizans and Labourers Dwellings Improvement (Scotland) Acts, 1875 and 1880.

2. The schedule to the principal Act shall be construed as if the schedule to this Act formed part thereof.

3. On the occasion of assessing the compensation payable under any improvement scheme in respect of any house or premises situate within an unhealthy area, evidence shall be receivable

by the arbitrator to prove that at the date of the confirming Act authorising such scheme, or at some previous date not earlier than the date of the official representation in which the scheme originated, such house or premises was by reason of its unhealthy state, or by reason of overcrowding or otherwise, in such a condition as to have been a nuisance within the meaning of the Acts relating to nuisances; and if the arbitrator is satisfied that, from either of such causes as aforesaid, such house or premises was, at such dates as aforesaid or either of them, a nuisance as aforesaid, he shall then determine what would have been the value of such house or premises supposing the nuisance to have been abated, and what would have been the expense of abating the nuisance; and the amount of compensation payable in respect of such house or premises shall be an amount equal to the estimated value of the house or premises after the nuisance was abated, and after deducting the estimated expense of abating the nuisance.

4. Whereas by the fifth section of the principal Act it is provided, amongst other things, that an improvement scheme of a local authority shall provide for the accommodation of at least as many persons of the working classes as may be displaced in the area with respect to which the scheme is proposed in suitable dwellings which, unless there are special reasons to the contrary,

shall be situate within the limits of the same area or in the vicinity thereof:

And whereas it not unfrequently happens that, having due regard to the requirements of persons of the working classes displaced by an improvement scheme, equally convenient accommodation at a much less cost can be furnished to such persons or some of them at some place other than within the area or the immediate vicinity of the area from which they have been displaced: Be it enacted that—

Where it is proved to the satisfaction of the confirming authority on an application to authorise or modify an improvement scheme that equally convenient accommodation can be provided for any persons of the working class displaced by an improvement scheme at some place other than within the area or the immediate vicinity of the area comprised in the improvement scheme, and it is also proved to the satisfaction of such authority that the required accommodation has been or is about to be forth-

with provided, it shall be lawful for the confirming authority accordingly to authorise any such improvement scheme, or to permit a modification of any such scheme, and the requirements of the principal Act with respect to providing accommodation for persons of the working class shall, to the extent to which accommodation is provided in accordance with this section, be deemed to have been complied with.

A local authority may for the purpose of providing accommodation for persons of the working classes displaced by any improvement scheme, appropriate any lands for the time being belonging to them which are suitable for the purpose, or may purchase by agreement any such further lands as may be convenient.

5. The Acts relating to nuisances mean as respects any place in Scotland, the Public Health (Scotland) Act, 1867, and any local Act which contains any provisions with respect to nuisances in that place.

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SCHEDULE.

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1. The publication by the local authority of the appointment of the arbitrator, and the other particulars mentioned in article six of the schedule to the principal Act, shall be made not only by advertisement, but also by placards and handbills affixed in conspicuous places on or near the lands to be taken, and also by leaving a notice thereof at each house proposed to be taken, and also by sending a notice thereof by post to the persons interested in such lands as owners or reputed owners, lessees or reputed lessees, so far as they can be reasonably ascertained.

2. The arbitrator shall have the same power of apportioning any feu duty, ground-annual, casualty of superiority, or any rent or other annual or recurring payment or incumbrance, or any rent payable in respect of lands comprised in a lease, as the sheriff has under the Lands Clauses Consolidation (Scotland) Act, 1845.

3. Notwithstanding anything in section ninety of the Lands Clauses Consolidation (Scotland) Act, 1845, the arbitrator may determine that such part of any house, building, or manufactory as is proposed to be taken by the local authority can be taken without material damage to such house, building, or manufactory, and if he so determine may award compensation in respect of the severance of the part so proposed to be taken, in addition to the value of that part, and thereupon the party interested shall be required to sell and convey to the local authority such part, without the local authority being obliged to purchase the greater part or the whole of such house, building, or manufactory.

The local authority, or any person interested, if dissatisfied with a determination under this enactment, may, in manner provided by article twenty-six of the schedule to the principal Act, submit the question of whether the said part can be taken without material damage, as well as the question of the proper amount of compensation, to a jury; and the notice of intention to appeal shall be given within the same time as notice of intention to appeal against the amount of compensation awarded is required to be given.

4. The amount of purchase money or compensation to be paid in pursuance of section one hundred and seventeen of the Lands Clauses Consolidation (Scotland) Act, 1845, in respect of any estate, right, or interest in or charge affecting any of the scheduled lands which the local authority have through mistake or inadvertence failed or omitted duly to purchase or make compensation for, shall be awarded by the arbitrator and be paid in like manner, as near as may be, as the same would have been awarded and paid if the claim of such estate, right, interest, or charge had been delivered to the arbitrator before the day fixed for the delivery of statements of claims; with this qualification, that the first award of the arbitrator shall be final, and not provisional.

If the arbitrator is satisfied that the failure or omission to purchase the said estate, right, interest, or charge arose from any default on the part either of the claimant or of the local authority, he may direct the costs to be paid by the party so in default.

## CHAP. 3.

*Indian Salaries and Allowances Act, 1880.*

## ABSTRACT OF THE ENACTMENTS.

1. *Short title.*
2. *Power to regulate certain allowances for equipment, &c.*
3. *Power to regulate certain ecclesiastical salaries.*
4. *Charges on Indian revenues not to be increased.*
5. *Repeal of enactments in Second Schedule.*

## SCHEDULES.

An Act to amend the Law relating to the Salaries and Allowances of certain Officers in India; and for other purposes relating thereto.

(15th March 1880.)

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. This Act may be cited as the Indian Salaries and Allowances Act, 1880.

2. It shall be lawful for the Secretary of State in Council of India from time to time to fix, alter, or abolish the allowances for equipment

and voyage of the several officers specified in the First Schedule to this Act, or any of them.

3. It shall be lawful for the Secretary of State in Council of India from time to time to fix and alter the salaries, and to fix, alter, or abolish the allowances of the bishops and archdeacons of Calcutta, Madras, and Bombay, or any of them :

Provided that nothing in this section shall affect the salary or allowances of any person who is such bishop or archdeacon at the passing of this Act.

4. Nothing in this Act shall authorise the imposition of any additional charge on the revenues of India.

5. The enactments described in the Second Schedule to this Act are hereby repealed to the extent in that Schedule mentioned.

## SCHEDULES.

## FIRST SCHEDULE.

The Governor-General of India and the Members of his Council.  
The Governors of Madras and Bombay and the Members of their Councils.  
The Commander-in-Chief of the Forces in India.  
The Commanders-in-Chief of Madras and Bombay.  
The Bishops and Archdeacons of Calcutta, Madras, and Bombay.

## SECOND SCHEDULE.

53 Geo. 3. c. 155. -  
in part.

An Act for continuing in the East India Company for a further term the possession of the British territories in India, together with certain exclusive privileges; for establishing further regulations for the government of the said territories, and the better administration of justice within the same, and for regulating the trade to and from the places within the limits of the said company's charter.

In part; namely—

Section eighty-nine from "and the said Court of Directors" to the end of the section.

4 Geo. 4. c. 71. - in part.	<p>An Act for defraying the charge of retiring pay, pensions, and other expense of that nature of His Majesty's forces serving in India, for establishing the pensions of the bishop, archdeacons, and judges, for regulating ordinations, and for establishing a court of judicature at Bombay.</p> <p>In part; namely— In section three, the words "and to any such archdeacon who shall have exercised in the East Indies or parts aforesaid for ten years the office of archdeacon," and the words "or archdeacon" at the end of this section.</p>
3 & 4 Will. 4. c. 85. - in part.	<p>An Act for effecting an arrangement with the East India Company, and for the better government of His Majesty's Indian territories till the thirtieth day of April one thousand eight hundred and fifty-four.</p> <p>In part; namely— Section seventy-six, from "and the said Court of Directors" to the end of the section, and section ninety-one.</p>

## CHAP. 4.

*Relief of Distress (Ireland) Act, 1880.*

## ABSTRACT OF THE ENACTMENTS.

1. *Short title.*
2. *Interpretation.*
3. *Extension of power to grant out-door relief in food and fuel.*
4. *Power to borrow.*
5. *Power of Board of Works to lend.*
6. *Repayment of loans made by the Board of Works.*
7. *Orders for payment of loans may be made by Local Government Board.*
8. *Confirmation of expenditure by guardians, and indemnity.*
9. *Validation of loans.*
10. *Validation of baronial presentments.*
11. *Future meetings of baronial sessions.*
12. *Permanence of constitution of sessions.*
13. *Repayment of advances.*
14. *Tax to be divided like poor rate.*
15. *Remuneration for county officers.*
16. *Audit of accounts.*
17. *Repayment to the Treasury.*
18. *Extension of borrowing powers of Commissioners of Church Temporalities.*
19. *Repayment to Church Commissioners.*
20. *Indemnity and saving.*
21. *Out-door relief not to involve electoral disability.*

## SCHEDULE.

An Act to render valid certain proceedings taken for the Relief of Distress in Ireland, and to make further provision for such Relief; and for other purposes.

(15th March 1880.)

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons,

in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as the Relief of Distress (Ireland) Act, 1880.

2. In this Act, if not inconsistent with the context, the term "the Poor Law Acts" means the Act passed in the session of Parliament held in the first and second years of the reign of Her present Majesty, chapter fifty-six, and the Acts altering or amending the same.

The term "the Land Improvement Acts" means the Acts mentioned in the schedule to this Act, and the Acts altering or amending them.

The term "the Local Government Board" means the Local Government Board for Ireland.

The term "Lord Lieutenant" means the Lord Lieutenant or other chief governor or governors of Ireland for the time being.

3. At any time after the passing of this Act and before the thirty-first day of December one thousand eight hundred and eighty, the Local Government Board may, from time to time, if and so far as they think fit, authorise by order under their seal the guardians of the poor of any union to administer relief in food and fuel, or either of them, out of the workhouse, to poor persons, whether such poor persons might, under the Poor Law Acts, have obtained relief out of the workhouse or not, in the union, or in any electoral division or divisions thereof, for any time not exceeding two calendar months from the date of such order; and the Local Government Board may, from time to time, by an order under their seal for that purpose, revoke any such order either wholly or with reference to any particular person or class of persons in receipt of such relief; and on the receipt by the guardians of any union of any such order of the Local Government Board authorising such relief in food and fuel, or either of them, the guardians shall make provision for affording such relief accordingly for such time and on such conditions as may be specified in the order or until the said order is revoked; and the proviso at the end of the second section of the Act passed in the session of Parliament of the twenty-fifth and twenty-sixth years of the reign of Her present Majesty, chapter eighty-three, shall not apply to the relief to be afforded under this Act.

The expense of affording relief under this Act to each person so relieved shall be charged in the same manner as if such expense had been incurred in affording in-door relief to such person under the provisions of the Poor Law Acts.

4. In addition to any power of borrowing vested in boards of guardians under the Acts in force at the time of the passing of this Act, the board of guardians of any union may, with the sanction of the Local Government Board, for the purpose of defraying any costs, charges, or expenses incurred or to be incurred by them in the execution of this Act, or of the Poor Law Acts, other than for building, borrow and take up at interest any sums of money necessary for defraying any such costs, charges, and expenses.

In the case of every such loan the following provisions shall take effect:—

- (1.) The Board of Guardians may borrow any such sums on the credit of the rates of such of the electoral divisions in the union as the guardians with the sanction of the Local Government Board may determine; and for securing the repayment of any sum so borrowed, with interest thereon, they may mortgage to the persons by or on behalf of whom such sums are advanced the rates leviable on such electoral division or divisions.
- (2.) The money shall be borrowed for such time not exceeding ten years as the guardians with the consent of the Local Government Board determine in each case.
- (3.) It shall not be lawful for the Local Government Board to sanction any such loan after the first day of March one thousand eight hundred and eighty-one.
- (4.) All sums so borrowed shall be repaid by such instalments as may be agreed on with the sanction of the Local Government Board.

The several provisions of the Public Health (Ireland) Act, 1878, relative to loans to rural sanitary authorities, so far as they are consistent with the enactments contained in this Act, shall apply to all loans contracted by Boards of Guardians under this Act.

5. The Commissioners of Public Works in Ireland may, with the consent of the Commissioners of Her Majesty's Treasury, on the application of any Board of Guardians and on the recommendation of the Local Government Board, make out of any moneys placed at their disposal by Parliament for the purpose of loans any loan to such Board of Guardians in pursuance of any power of borrowing conferred by this Act, on the security of any rate applicable to any of the purposes of the Poor Law Acts, and without requiring any further or other security, such loans to bear interest at the rate of three and a half per centum per annum.

6. If at any time before the passing of this Act the Commissioners of Public Works in Ireland shall have advanced money to any Board of Guardians upon the faith of a resolution of the board agreeing to repay the advance in such manner as the Commissioners of the Treasury should prescribe, the sum so advanced, or any part thereof remaining unpaid from time to time, together with interest on such sum or part, shall be a charge upon the rates leviable on such electoral division or divisions in the union as the Local Government Board shall appoint; and such sum or part shall be repaid in such manner

within such time, and with such interest, as the Commissioners of the Treasury shall prescribe.

7. If at any time the Commissioners of Public Works in Ireland certify that any sum remains due to them from the Board of Guardians of any union on account of any loan or advance made under this Act, or on the faith of any such resolution, and is then payable to the Commissioners, the Local Government Board shall by order under their seal assess that sum on such of the several electoral divisions in the union as they think proper, and shall send copies of the order to the Board of Guardians and to the treasurer of the union; and thereupon the treasurer of the union shall, out of any money then in his hands to the credit of the Guardians, or if such money is insufficient for the purpose then out of all moneys subsequently received by him on account of the guardians, pay over the amount mentioned in the order to the Commissioners of Public Works. The guardians of the union shall debit the several electoral divisions with such proportions of that sum as the said order of the Local Government Board shall have assessed upon such electoral divisions respectively.

8. If at any time before the passing of this Act any outlay shall have been made by any Board of Guardians for the purpose of providing out-door relief in food or fuel, such outlay, and all resolutions and proceedings of the board and of their officers in relation thereto, shall be ratified and confirmed and be as valid and effectual as if the outlay had been made and the resolutions and proceedings had been passed and taken under the authority and in compliance with the provisions of this Act: And all persons who have acted in any manner in making any such outlay or otherwise in providing such relief shall be released and indemnified from and against any penalties, and from and against all legal claims or proceedings in consequence thereof.

9. Whereas under the provisions of the Land Improvement Acts, and under the provisions of the Public Health (Ireland) Act, 1878, and the Public Health (Ireland) Amendment Act, 1879, the Commissioners of Public Works in Ireland are empowered to lend money to owners of land and to sanitary authorities, but subject to the conditions prescribed by the above-mentioned Acts:

And whereas by reason of the want of employment for the labouring classes, and the consequent distress in certain districts in Ireland, it became desirable to extend without delay the facilities and advantages in obtaining loans under the said Acts, and to dispense with some of the conditions prescribed by the said Acts:

And thereupon, for the purpose above stated, and with a view to enable owners of land and sanitary authorities to afford immediate employment to the labouring classes in such distressed districts, the Commissioners of Her Majesty's Treasury, on the application of His Grace the Lord Lieutenant of Ireland, authorised the Commissioners of Public Works in Ireland to lend to owners of land and sanitary authorities in such districts sums of money for some of the purposes of the said Acts, but upon terms more favourable to the borrowers than the terms prescribed by the said Acts:

And in pursuance of such authority the Commissioners of Public Works, by public notice dated the twenty-second day of November one thousand eight hundred and seventy-nine, and by a subsequent public notice dated the twelfth day of January one thousand eight hundred and eighty, amending the former notice and extending to all loans which had been applied for and obtained under the conditions of the said former notice, announced that they were authorised to make loans to owners of land and to sanitary authorities in certain districts under the said Acts, but upon the terms set forth in such notices, for the purposes therein specified:

And whereas a number of loans have been applied for by owners of land and sanitary authorities, and have been made to them by the Commissioners of Public Works, in accordance with the said public notices and upon the terms set forth therein, and it is necessary and expedient that all such loans, and the several proceedings taken or which shall be taken in reference to them, should be ratified and confirmed upon the terms set forth in such notices:

Therefore, all loans made by the Commissioners of Public Works in Ireland, in compliance with applications made under either of their public notices of the twenty-second day of November and the twelfth day of January last, and all advances of money made or hereafter to be made by the Commissioners on account of any such loan, and all contracts, express or implied by law, entered into between the Commissioners and any person or sanitary authority respecting any such loan, or any interest thereon, and all securities for the repayment of any such loan or interest, and all things done or to be done in the making or repaying of such loan, shall be ratified and confirmed and be as valid and effectual as if the terms set forth in the second of the said notices had been enacted in the said Acts as the terms upon which any such loan might be made, and as if such loan had been made in other respects in strict accordance with the provisions of such Acts applicable to such loan; and it is hereby declared that the provisions of the second of the two notices aforesaid shall extend to loans applied for and obtained under the conditions of the notice

dated the twenty-second of November; and in the case of any loan which would have been charged upon any special land or rate if made in strict accordance with the provisions of such Acts applicable to such loan, or with reference to which loan any of such Acts creates any legal right or liability, such land or rate shall be charged, and such legal right or liability shall be created, as fully as if such loan were made in strict accordance with the provisions of such Acts applicable to such loan: Provided always, that in any award for increase of rent to be made by the Commissioners of Public Works, Ireland, under the said Land Improvement Acts, the increase, if any, so awarded shall not exceed the yearly rentcharge payable by the owner for such loan.

10. And whereas further measures for the relief of some of such distressed districts became necessary, and the Commissioners of Her Majesty's Treasury accordingly authorised the Commissioners of Public Works to advance by way of loan, certain sums to be expended in such works as should be presented by extraordinary presentment sessions of certain baronies, which the Lord Lieutenant announced that he would convene, on the application of the guardians of the poor of unions situate either wholly or in part in those baronies, when such application was supported by the report of the Local Government Board; and for other purposes:

And whereas, on such applications being made, the Lord Lieutenant directed extraordinary meetings of the baronial presentment sessions to be convened in certain baronies in Ireland, and issued certain instructions to the justices and the associated cess-payers assembled at such presentment sessions as to the works which they might present, and their proceedings in relation thereto, and as to the approval by the Commissioners of Public Works of such presentments, and the terms upon which loans would be made for such works by the Commissioners of Public Works, and as to other matters:

And whereas extraordinary meetings of the presentment sessions were held in some of such baronies, and the justices and associated cess-payers have made presentments for works in accordance with such instructions, and such presentments have been approved by the Commissioners of Public Works, and loans have been made for such works on the terms contained in such instructions:

And whereas it is necessary and expedient that all presentments made at any such presentment sessions before or after the passing of this Act which have been or shall be approved by the Commissioners of Public Works, and all loans and advances which have been made or shall be made thereon, and the several proceedings taken, or which shall be taken thereunder, should be

ratified and confirmed, and that such loans should be repaid as is provided by this Act:

Therefore all presentments made or to be made at any such extraordinary presentment sessions in accordance with such instructions, and which have been or shall be approved by the Commissioners of Public Works, and all works consequent upon such presentments, and all advances of public money made or to be made, and all things done or to be done in execution of such presentments, shall be ratified and confirmed as if the same had been presented, made, and done strictly in accordance with the statutes under which such works may be presented for.

11. At any time after the passing of this Act, and before the thirty-first day of December one thousand eight hundred and eighty, the Lord Lieutenant may from time to time, if he thinks fit, convene extraordinary presentment sessions for any barony, and may issue instructions to the justices and the associated cess-payers assembled at such sessions, to which instructions they shall conform.

The Lord Lieutenant may from time to time, if he think fit, revoke, vary, or add to the instructions issued before the passing of this Act, or which may be issued by him to the justices, and associated cess-payers constituting any extraordinary presentment sessions, but in so far as such instructions relate to any loan or advance of money only with the consent of the Commissioners of Her Majesty's Treasury. All presentments made by such sessions, in accordance with the instructions from time to time in force, shall be as valid and effectual as if they had been duly presented by the grand jury, and flated by the court at any assizes or presenting term.

The Commissioners of Public Works may, with the consent of the Commissioners of Her Majesty's Treasury, make loans or advances for the purposes of carrying into effect the presentments of any extraordinary presentment sessions convened under the authority of this Act, and for the other purposes mentioned in the instructions issued by the Lord Lieutenant, upon the terms hereinafter stated.

All instructions issued by the Lord Lieutenant to the justices and associated cess-payers of any extraordinary presentment sessions shall be laid before Parliament within one month after they have been issued, if Parliament is then sitting, and if not, then within one month after the next meeting of Parliament.

12. The several persons entitled from time to time to attend as justices and as associated cess-payers respectively at the extraordinary presentment sessions in any barony, in accordance with the instructions issued by the Lord

Lieutenant, and the persons appointed to serve on any Standing Committee of any such sessions, shall, notwithstanding that they may have ceased to be entitled to attend at the ordinary presentment sessions of the barony, continue to be exclusively entitled to constitute the extraordinary presentment sessions for a period of six months after the first meeting of the extraordinary presentment sessions at which they were respectively entitled to attend, or for such other period as the Lord Lieutenant by order, to be published in the Dublin Gazette, may appoint.

13. The moneys advanced from time to time by the Commissioners of Public Works for the purpose of the presentments of any extraordinary presentment sessions shall be charged upon the several baronies for the use of which they were advanced. The moneys paid from time to time by the Commissioners of Public Works to the secretary of the grand jury of any county, or to any county surveyor, for expenses incurred by such secretary or surveyor, shall be charged upon the county at large. All such sums shall be repaid, with interest at the rate of one per centum per annum commencing from the expiration of two years after the making of the loan, by grand jury presentments, by thirty half-yearly instalments, the first of such instalments to be presented at the assizes next preceding the expiration of the said period of two years; and the Commissioners of Public Works shall, before each assizes, make out a certificate for each county in which such extraordinary presentment sessions have been held, specifying the amount properly chargeable upon each barony in the county or upon the county at large. Every such certificate shall be conclusive evidence of all facts and circumstances necessary to authorise the making of it. The Commissioners of Public Works shall transmit the certificate to the secretary of the grand jury, to be laid before the grand jury, and thereupon the grand jury shall, without any previous application to presentment sessions, make a presentment for the amount specified in such certificate as payable by each barony, or by the county at large, or, in default of such presentment, the amount shall be raised by an order of the judge of assize, which order shall have the force of a presentment. The amounts raised under such presentments shall be paid to the Commissioners of Public Works in such manner as the Commissioners of the Treasury may from time to time direct.

14. Any person who is liable to pay a rent in respect of any premises in any barony chargeable with any such repayment may deduct from such rent, for each pound of the rent which he is liable to pay, one half of the sum which he has paid under any such grand jury presentment in

respect of each pound of the net annual value of such premises as valued under the Acts relating to the valuation of rateable property in Ireland, and so in proportion for any less sum than a pound: Provided always, that it shall not be lawful under this Act for any such person to deduct from the rent payable by him for such premises a larger sum than one half of the amount of the cess which has been paid by him in respect of the same. Any person receiving rent in respect of any premises liable to such payment under grand jury presentment, who also pays a rent in respect of the same, shall be entitled to deduct from the rent so paid by him a sum bearing such a proportion to the amount of the sum deducted from the rent received by him as the rent paid by him bears to the rent received by him.

Provided always, whenever the net annual value of the whole of the rateable hereditaments occupied by any person having no greater estate or interest therein than a tenancy from year to year, or holding under any lease or other contract of tenancy, shall not exceed four pounds, the cess payable in respect of such hereditaments under any presentment pursuant to this Act shall be apportioned on the immediate lessor of such person; and, if at the time of apportioning any such cess the name of such immediate lessor shall not be accurately known to the person apportioning the cess, it shall be sufficient to describe him as "the immediate lessor," with or without any name or further addition; and such cess shall be held to be duly apportioned on him by such description, and shall be recoverable from him accordingly, and all the provisions contained in the sixtieth section of the Landlord and Tenant (Ireland) Act, 1870, relative to the payment of grand jury cess in certain cases, and to the making of deductions from rent on account of such payment, shall apply to the cess payable in respect of such hereditaments under any presentment made pursuant to this Act, whether such hereditaments are held under a tenancy created before or after the passing of the said Landlord and Tenant (Ireland) Act, 1870.

In the baronies chargeable under this Act receipts for grand jury cess shall be given by the collectors, distinguishing the amount paid under presentments pursuant to this Act from the rest of the cess payable for the half year.

15. The Commissioners of Public Works may pay to the secretary of the grand jury of any county, and to the county surveyor, such sums as they consider to have been properly and necessarily expended by such secretary or surveyor in publishing notices or advertisements, or in attendance at such presentment sessions, or otherwise in relation to such presentment sessions, and for the remuneration of such clerks or

assistants as the Commissioners may sanction. The sums so paid by the Commissioners, and any sums paid by them before the passing of this Act to any such secretary or county surveyor for such purposes, shall be repaid to the Commissioners by grand jury presentment in the manner provided by this Act.

The grand jury shall present to every collector remuneration for the collection of all assessments made for the purposes mentioned in this Act, at the same rate as they present to him for collecting grand jury cess; and the grand jury may, if they think fit, also present to the secretary of the grand jury, and the county surveyor, and his assistants, and to the treasurer of any county who was in office as such treasurer prior to the passing of the Act of the session of Parliament held in the thirtieth and thirty-first years of the reign of Her present Majesty, chapter forty-six, such reasonable sum, to be levied off the county at large, as remuneration for the trouble incurred by each such person in respect to such presentment sessions, as, having regard to the other duties of such person and the rate at which he is remunerated for them, the grand jury thinks fit.

Where any presentment has been made at extraordinary presentment sessions for the making of a new road or the widening of an old road, the grand jury may, without previous application to presentment sessions, present to any owner or occupier of the ground through which the new road is to be made or into which the old road is to be widened, as compensation for the loss sustained by such owner or occupier, such sums as they think fit, chargeable upon the barony or baronies in which the land is situate. All such owners and occupiers shall be entitled to traverse for damages.

The Commissioners of Public Works may, if they think fit, lend to any grand jury the amounts presented by the grand jury under the authority of this section. Every such loan shall be chargeable upon the county at large, or upon the barony specified in the presentment, and shall be repayable on the same terms as the loans for other presentments validated by this Act.

16. The accounts of every extraordinary presentment sessions shall be audited in the same manner as county accounts are audited; and the provisions of all Acts relative to the auditing of county accounts in Ireland shall apply to the auditing of the accounts of such presentment sessions.

17. Whereas the Commissioners of Public Works have, by the authority of the Commissioners of the Treasury, advanced to owners of land, and to sanitary authorities, and to county officers, and for the purposes of the extraordinary presentment sessions, certain moneys for the time

being in their hands or under their control for purposes other than those, or on terms different from those, for which the said moneys were voted by Parliament:

And whereas it is expedient to make good the same and to provide for further advances under this Act:

Therefore, the Commissioners of Church Temporalities in Ireland shall advance to the Commissioners of Public Works out of any moneys at their disposal, or which they may raise on the security of their annual income, such sum or sums not exceeding in the whole the sum of seven hundred and fifty thousand pounds, as the Commissioners of the Treasury may from time to time direct.

18. The several provisions of the Irish Church Act, 1869, with respect to the raising of money by the Commissioners of Church Temporalities in Ireland, and the giving of security for the repayment thereof, and of interest thereon, and with respect to the power of the Commissioners for the Reduction of the National Debt to make advances to the said Commissioners of Church Temporalities, and with respect to the powers of the Commissioners of Her Majesty's Treasury in relation to the money so to be raised, shall be extended and shall apply to the purposes of this Act as fully as such provisions apply to the purposes of the Irish Church Act, 1869.

Any advance made by the Commissioners for the Reduction of the National Debt to the Commissioners of Church Temporalities for the purposes of this Act, shall be charged upon the property accruing to and shall be payable by the Commissioners of Church Temporalities under the said Irish Church Act, 1869, as if it were part of the debt already owing by the Commissioners of Church Temporalities to the Commissioners for the Reduction of the National Debt, and shall be paid to the latter in priority of all debts due from the said Church Temporalities Commissioners under any statutes except the said Irish Church Act, 1869.

19. The amounts presented from time to time by grand juries, and the amounts paid from time to time by sanitary authorities and owners of land, in repayment of loans made by the Commissioners of Public Works, shall be paid by the Commissioners of Public Works, subject to such directions as the Commissioners of the Treasury may give from time to time, to the Commissioners of Church Temporalities.

20. All persons who shall have acted in any manner in making any such loan as is mentioned in this Act, or in any proceeding for giving effect to the notices or instructions mentioned in this Act, or to the presentments of the extraordinary presentment sessions, or in making any advance

of money to the Commissioners of Public Works or to any other person or authority for the purposes of such loans, shall be released and indemnified from and against all penalties in consequence thereof.

Nothing contained in this Act shall be taken to prejudice or affect any proceeding for the recovery of any debt from any grand jury, or board of guardians, or sanitary authority, or person which the Commissioners of Public Works would have been entitled to take if this Act had not been passed.

21. And whereas by reason of exceptional distress in Ireland persons entitled to the parliamentary or other franchise may be compelled to accept temporary relief under the provisions of this Act, and it is reasonable that under the special circumstances they should not suffer any disability: Be it therefore enacted, that no electoral disability or loss of such franchise shall be incurred by any voter who may be granted out-door relief or assistance under the provisions of this Act.

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SCHEDULE of Acts referred to in Section 2.

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10 & 11 Vict. c. 32.  
12 & 13 Vict. c. 59.  
13 & 14 Vict. c. 31.  
15 & 16 Vict. c. 34.

23 & 24 Vict. c. 19.  
25 & 26 Vict. c. 29.  
29 & 30 Vict. c. 40.

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CHAP. 5.

*Consolidated Fund (No. 1) Act, 1880.*

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ABSTRACT OF THE ENACTMENTS.

1. *Issue of 3,982,902l. 3s. 3d. out of the Consolidated Fund for the service of the year ending 31st March 1880.*
2. *Issue of 16,641,300l. out of the Consolidated Fund for the service of the year ending 31st March 1881.*
3. *Power to the Treasury to borrow.*
4. *Short title.*

An Act to apply certain Sums out of the Consolidated Fund to the service of the years ending on the thirty-first day of March one thousand eight hundred and eighty, and one thousand eight hundred and eighty-one.

(15th March 1880.)

Most Gracious Sovereign,

WE, Your Majesty's most dutiful and loyal subjects, the Commons of the United Kingdom of Great Britain and Ireland, in Parliament assembled, towards making good the supply which we have cheerfully granted to Your Majesty in this session of Parliament, have resolved to grant unto Your Majesty the sums herein-after mentioned; and do therefore most humbly beseech Your Majesty that it may be enacted; and be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords

Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. The Commissioners of Her Majesty's Treasury for the time being may issue out of the Consolidated Fund of the United Kingdom of Great Britain and Ireland, and apply towards making good the supply granted to Her Majesty for the service of the year ending on the thirty-first day of March one thousand eight hundred and eighty, the sum of three millions nine hundred and eighty-two thousand nine hundred and two pounds three shillings and threepence.

2. The Commissioners of Her Majesty's Treasury for the time being may issue out of the Consolidated Fund of the United Kingdom of Great Britain and Ireland, and apply towards making good the supply granted to Her Majesty for the service of the year ending on the thirty-first day of March one thousand eight hundred

and eighty-one, the sum of sixteen millions six hundred and forty-one thousand three hundred pounds.

3. The Commissioners of the Treasury may borrow from time to time, on the credit of the said sums, any sum or sums not exceeding in the whole the sum of twenty millions six hundred and twenty-four thousand two hundred and two pounds three shillings and threepence, and shall repay the moneys so borrowed, with interest not exceeding five pounds per centum

per annum, out of the growing produce of the Consolidated Fund at any period not later than the next succeeding quarter to that in which the said sums were borrowed.

Any sums so borrowed shall be placed to the credit of the account of Her Majesty's Exchequer, and shall form part of the said Consolidated Fund, and be available in any manner in which such fund is available.

4. This Act may be cited as the Consolidated Fund (No. 1) Act, 1880.

#### CHAP. 6.

#### *Beer Dealers Retail Licences Act, 1880.*

##### ABSTRACT OF THE ENACTMENTS.

1. *Justices to have discretion as to licences for consumption of beer off premises.*
2. *Licences at annual licensing meetings only.*
3. *Short title ; extent ; construction.*

##### SCHEDULE.

An Act for amending the law relating to the grant by Justices of Certificates for Beer Dealers Retail Licences.

(19th March 1880.)

WHEREAS by the enactments described in the schedule to this Act provision is now made for the holder of a strong beer dealer's wholesale excise licence obtaining, on a certificate granted by justices, an additional licence for sale of beer by retail for consumption off the premises, and it is expedient that justices should be at liberty to exercise their discretion respecting the grant of such certificates, as they are in respect of their certificates for licences for sale of beer to be consumed on the premises, and that such certificates should be granted at the general annual licensing meeting of justices, and not at any other time.

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. Section eight of the Wine and Beerhouse Act, 1869, is hereby repealed, as far as the qualification therein contained relates to grants of certificates for such additional licences as aforesaid ; and the licensing justices shall be at liberty either to refuse such certificates as aforesaid on any grounds appearing to them in the exercise of their discretion sufficient, or to grant the same to such persons as they, in the execution of their statutory powers, and in the exercise of their discretion, deem fit and proper.

2. Section thirty-one of the Licensing Act, 1874, is hereby repealed, as from and after the general annual licensing meeting held in any licensing district next after the passing of this Act ; and thenceforth certificates for such additional licences as aforesaid shall be granted at general annual licensing meetings, and not at any other time.

3. This Act may be cited as the Beer Dealers Retail Licences Act, 1880, and shall not extend to Scotland or Ireland, and words therein have the same meaning as in the Licensing Act, 1872.

##### SCHEDULE.

##### *Enactments relating to Beer Dealers Retail Licences.*

An Act for granting to Her Majesty certain duties of Inland Revenue, and to amend the laws relating to the Inland Revenue.—26 & 27 Vict. c. 33 (section one).

The Wine and Beerhouse Act, 1869.—32 & 33 Vict. c. 27.

The Licensing Act, 1874.—37 & 38 Vict. c. 49.

## CHAP. 7.

*Road Debts on Entailed Estates (Scotland).*

## ABSTRACT OF THE ENACTMENTS.

1. *Amendment of s. 70 of 41 & 42 Vict. c. 51.*

An Act to amend the Law in regard to charging Road Debts on Entailed Estates in Scotland.

(19th March 1880.)

WHEREAS it is expedient that the provisions of the seventieth section of the Roads and Bridges (Scotland) Act, 1878, should be extended to debts affecting turnpike roads and bridges made or built prior to the passing of the Act of the first and second years of the reign of His Majesty King William the Fourth, chapter forty-three, as well as to debts affecting turnpike roads and bridges made or built subsequently to the passing of the last-mentioned Act:

Be it enacted by the Queen's most Excellent

Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. The seventieth section of the Roads and Bridges (Scotland) Act, 1878, shall be read and construed as if the words "such debts" included sums of money advanced by any person to the trustees acting under any Act of Parliament for the purpose of making or maintaining any turnpike road or building any bridge in Scotland, notwithstanding that such turnpike road was made or such bridge was built prior to the passing of the Act of the first and second years of the reign of His Majesty King William the Fourth, chapter forty-three.

## CHAP. 8.

*Artizans Dwellings Act (1868) Amendment Act (1879) Amendment.*

## ABSTRACT OF THE ENACTMENTS.

*Amendment of s. 22 of recited Act.*

An Act to explain and amend the twenty-second section of the Artizans and Labourers Dwellings Act, 1868, Amendment Act, 1879.

(19th March 1880.)

WHEREAS an Act entitled the Artizans and Labourers Dwellings Act, 1868, Amendment Act, 1879, was passed in the last session of Parliament:

And whereas in the twenty-second section of the said Act the words "in the form set forth in the Third Schedule hereto" were inserted by mistake:

Be it therefore declared and enacted by the Queen's most Excellent Majesty, by and with the consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That the said section shall be construed and read as if the said words had not been inserted therein.

## CHAP. 9.

*Army Discipline and Regulation (Annual) Act, 1880.*

## ABSTRACT OF THE ENACTMENTS.

1. *Short title.*
2. *Army Discipline and Regulation Act (42 & 43 Vict. c. 33.) to be in force for specified times.*
3. *Prices in respect of billeting.*

## SCHEDULE.

An Act to provide during twelve months  
for the Discipline and Regulation of  
the Army. (19th March 1880.)

WHEREAS the raising or keeping a standing army within the United Kingdom of Great Britain and Ireland in time of peace, unless it be with the consent of Parliament, is against law :

And whereas it is adjudged necessary by Her Majesty, and this present Parliament, that a body of forces should be continued for the safety of the United Kingdom, and the defence of the possessions of Her Majesty's Crown, and that the whole number of such forces should consist of one hundred and thirty-one thousand eight hundred and fifty-nine men, including those to be employed at the depôts in the United Kingdom of Great Britain and Ireland for the training of recruits for service at home and abroad, but exclusive of the numbers actually serving within Her Majesty's Indian possessions :

And whereas it is also judged necessary for the safety of the United Kingdom, and the defence of the possessions of this realm, that a body of Royal Marine forces should be employed in Her Majesty's fleet and naval service, under the direction of the Lord High Admiral of the United Kingdom, or the Commissioners for executing the office of Lord High Admiral aforesaid :

And whereas the said Marine forces may frequently be quartered or be on shore, or sent to do duty or be on board transport ships or merchant ships or vessels, or ships or vessels of Her Majesty, or other ships or vessels, or they may be under other circumstances in which they will not be subject to the laws relating to the government of Her Majesty's forces by sea :

And whereas no man can be forejudged of life or limb, or subjected in time of peace to any kind of punishment within this realm by martial law, or in any other manner than by the judgment of his peers, and according to the known and established laws of this realm ; yet nevertheless it being requisite, for the retaining all the before-mentioned forces, and other persons subject to military law, in their duty, that an exact discipline be observed, and that persons belonging to the said forces who mutiny or stir up sedition, or desert Her Majesty's service, or are guilty of crimes and offences to the prejudice of good order and military discipline, be brought to a more exemplary and speedy punishment than the usual forms of the law will allow :

And whereas the Army Discipline and Regulation Act, 1879, will expire—

- (a.) In the United Kingdom, the Channel Islands, and the Isle of Man on the thirtieth day of April one thousand eight hundred and eighty ; and

(b.) Elsewhere in Europe, inclusive of Malta, also in the West Indies and America, on the thirty-first day of July one thousand eight hundred and eighty ; and

(c.) Elsewhere whether within or without Her Majesty's dominions, on the thirty-first day of December one thousand eight hundred and eighty :

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. This Act may be cited for all purposes as the Army Discipline and Regulation (Annual) Act, 1880.

2. The Army Discipline and Regulation Act, 1879, shall be and remain in force until the dates herein-after mentioned, and no longer, unless otherwise provided by Parliament ; that is to say,

(1.) Within the United Kingdom, the Channel Islands, and the Isle of Man, from the thirtieth day of April one thousand eight hundred and eighty to the thirtieth day of April one thousand eight hundred and eighty-one, both inclusive ; and

(2.) Elsewhere, in Europe, inclusive of Malta, also in the West Indies and America, from the thirty-first day of July one thousand eight hundred and eighty to the thirty-first day of July one thousand eight hundred and eighty-one, both inclusive ; and

(3.) Elsewhere, whether within or without Her Majesty's dominions, from the thirty-first day of December one thousand eight hundred and eighty to the thirty-first day of December one thousand eight hundred and eighty-one, both inclusive.

The Army Discipline and Regulation Act, 1879, while in force shall apply to persons subject to military law, whether within or without Her Majesty's dominions.

A person subject to military law shall not be exempted from the provisions of the Army Discipline and Regulation Act, 1879, by reason only that the number of the forces for the time being in the service of Her Majesty, exclusive of the Marine forces, is either greater or less than the number herein-before mentioned.

3. There shall be paid to the keeper of a victualling house for the accommodation provided by him in pursuance of the Army Discipline and Regulation Act, 1879, the prices specified in the Schedule hereto.



## SCHEDULE.

Accommodation to be provided.	Maximum Price.
Lodging and attendance for soldier where hot meal furnished -	Twopence halfpenny per night.
Hot meal as specified in Part I. of the Second Schedule to the Army Discipline and Regulation Act, 1879.	One shilling and one penny halfpenny each.
Where no hot meal furnished, lodging and attendance, and candles, vinegar, salt, and the use of fire, and the necessary utensils for dressing and eating his meat.	Fourpence per day.
Ten pounds of oats, twelve pounds of hay, and eight pounds of straw per day for each horse.	One shilling and ninepence per day.
Lodging and attendance for officer - - - - -	Two shillings per night.

*Note.*—An officer shall pay for his food.

## CHAP. 10.

*East India Loan (East Indian Railway Debentures) Act, 1880.*

## ABSTRACT OF THE ENACTMENTS.

1. *Power to Secretary of State to raise any sum not exceeding 2,950,000l.*
2. *As to issue of bonds.*
3. *As to issue of debentures.*
4. *As to payment of principal and interest on debentures.*
5. *Debentures and coupons for interest transferable by delivery.*
6. *Interest, &c. of capital stock.*
7. *Transfer books of such capital stock to be kept.*
8. *Amount to be charged on revenues of India.*
9. *Power to raise money for payment of principal money.*
10. *Securities, &c. to be charged on revenues of India.*
11. *Provisions as to composition for stamp duties on India bonds extended to bonds and debentures issued under this Act.*
12. *Forgery of debentures and bills to be punishable as forgery of East India bonds.*
13. *Saving borrowing powers of Secretary of State.*
14. *Stock created under this Act to be deemed East India stock.*
15. *Sect. 3, &c. of 33 & 34 Vict. c. 93. extended to capital stock created under this Act.*
16. *34 & 35 Vict. c. 29. extended to all capital stock issued by the Secretary of State under the authority of Parliament.*
17. *Short title.*

## SCHEDULE.

An Act to enable the Secretary of State in Council of India to raise money in the United Kingdom for the purpose of paying off or redeeming Debentures of the East Indian Railway Company.  
(19th March 1880.)

WHEREAS by virtue of the East Indian Railway Company Purchase Act, 1879, the under-

taking of the East Indian Railway Company, and all other the property of the said Company, save and except as therein mentioned, have been transferred to and vested in the Secretary of State in Council of India, herein-after called the Secretary of State, subject to such debts and liabilities as have been incurred by the said Company to the East India Company or to any person or persons with the sanction of the East India Company or of the Secretary of State, and

to interest on such of the said debts as carry interest:

And whereas among such debts and liabilities are included the principal moneys and interest secured by the debentures mentioned in the schedule hereto:

And whereas the principal moneys secured by the said debentures, amounting in all to two million nine hundred and fifty thousand pounds, will become payable at the respective times specified in the said schedule:

And whereas it is expedient that provision should be made for paying off or redeeming the said debentures as and when the principal moneys secured thereby become payable:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. It shall be lawful for the Secretary of State at any time or times to raise in the United Kingdom for the service of the Government of India such sum or sums of money, not exceeding in the whole two million nine hundred and fifty thousand pounds, as may be required for the purpose of paying off or redeeming the principal moneys, secured by the debentures specified in the schedule hereto, such sum or sums to be raised by the creation and issue of bonds, debentures, or capital stock bearing interest, or partly by one of such modes and partly by another or others.

2. All bonds issued under the authority of this Act may be issued under the hands of two members of the Council of India, and countersigned by the Secretary of State, or one of his under secretaries, or his assistant under secretary, and shall be for such respective amounts, payable after such notice, and at such rate or rates of interest, as the Secretary of State may think fit.

3. All debentures issued under the authority of this Act may be issued under the hands of two members of the Council, and countersigned as aforesaid, for such respective amounts, and at such rate or rates of interest, as the Secretary of State may think fit, and shall be issued at or for such prices and on such terms as may be determined by the Secretary of State.

4. All debentures issued under the authority of this Act shall be paid off at par at a time or times to be mentioned in such debentures respectively; and the interest on all such debentures shall be paid half-yearly on such days as shall be mentioned therein; and the principal moneys

and interest secured by such debentures shall be payable either at the treasury of the Secretary of State in London or at the Bank of England.

5. All or any number of the debentures issued under the authority of this Act, and all right to and in respect of the principal and interest moneys secured thereby, shall be transferable by the delivery of such debentures; and the coupons for interest annexed to any debenture issued under the authority of this Act shall also pass by delivery.

6. Any capital stock created under the authority of this Act shall bear such a rate of interest as the Secretary of State may think fit; and such capital stock may be issued on such terms as may be determined by the Secretary of State; and any such capital stock may bear interest during such period, and be paid off at par at such time, as the Secretary of State may prescribe previously to the issue of such capital stock.

7. In case of the creation and issue of any such capital stock there shall be kept, either at the office of the Secretary of State in London or at the Bank of England, books wherein entries shall be made of the said capital stock, and wherein all assignments or transfers of the same, or any part thereof, shall be entered and registered, and shall be signed by the parties making such assignments or transfers, or, if such parties be absent, by his, her, or their attorney or attorneys, thereunto lawfully authorised by writing under his, her, or their hands and seals, to be attested by two or more credible witnesses; and the person or persons to whom such transfer or transfers shall be made may respectively underwrite his, her, or their acceptance thereof; and no other mode of assigning or transferring the said capital stock or any part thereof, or any interest therein, shall be good and available in law, and no stamp duties whatsoever shall be charged on the said transfers or any of them.

8. The whole amount of the principal moneys to be charged on the revenues of India under this Act shall not exceed two millions nine hundred and fifty thousand pounds.

9. Upon or for the repayment of any principal money secured under the authority of this Act, the Secretary of State may at any time borrow or raise, by all or any of the modes aforesaid, all or any part of the amount of principal money repaid or to be repaid, and so from time to time as all or any part of any principal money under this Act may require to be repaid, but the amount to be charged upon the revenues of India shall not in any case exceed the principal money required to be repaid.

10. All bonds and debentures to be issued under this Act, and the principal moneys and interest thereby secured, and all capital stock to be issued under this Act, and the interest thereon, shall be charged on and payable out of the revenues of India, in like manner as other liabilities incurred on account of the Government of India.

11. The provisions contained in section four of the Act of the session holden in the fifth and sixth years of King William the Fourth, chapter sixty-four, with respect to the composition and agreement for the payment by the East India Company of an annual sum in lieu of stamp duties on their bonds, and the exemption of their bonds from stamp duties, shall be applicable with respect to the bonds and debentures to be issued under the authority of this Act, as if such provisions were here repeated and re-enacted with reference thereto.

12. All provisions now in force in anywise relating to the offence of forging or altering, or offering, uttering, disposing of, or putting off, knowing the same to be forged or altered, any East India bond, with intent to defraud, shall extend and be applicable to and in respect of any debenture or bond issued under the authority of this Act.

13. This Act shall not prejudice or affect any power of raising or borrowing money vested in

the Secretary of State at the time of passing thereof.

14. Any capital stock created under this Act shall be deemed to be East India stock, within the Act of the twenty-second and twenty-third Victoria, chapter thirty-five, section thirty-two, unless and until Parliament shall otherwise provide; and any capital stock created under this Act shall be deemed to be and shall mean India stock within the Act of the twenty-sixth and twenty-seventh Victoria, chapter seventy-three, anything in the said last-mentioned Act to the contrary notwithstanding.

15. The provisions contained in the third section of the Act of the thirty-third and thirty-fourth Victoria, chapter ninety-three, and all other enactments in the said Act relating to or affecting such provisions, shall be extended and be applicable to any capital stock created under this Act.

16. The provisions contained in the Act of the thirty-fourth and thirty-fifth Victoria, chapter twenty-nine, shall be extended and be applicable to all capital stock issued or to be issued by the Secretary of State under the authority of Parliament.

17. This Act may be cited as the East India Loan (East Indian Railway Debentures) Act, 1880.

#### SCHEDULE.

##### REDEEMABLE DEBENTURES OF EAST INDIAN RAILWAY COMPANY.

Principal Moneys secured.	When payable.	Rate of Interest per Annum.
£		
1,000,000 - - -	1 January 1881 - - -	4½ per cent.
1,279,850 - - -	12 July 1882 - - -	4 per cent.
230,150 - - -	1 December 1882 - - -	4 per cent.
440,000 - - -	19 March 1883 - - -	4 per cent.
2,950,000 - - -		

## CHAP. 11.

*India Stock (Powers of Attorney) Act, 1880.*

## ABSTRACT OF THE ENACTMENTS.

1. *Short title.*
2. *Powers of attorney for sale and transfer of India five per cent. stock to apply to India four per cent. stock.*
3. *Powers of attorney for receipt of dividends on India five per cent. stock to apply to India four per cent. stock.*
4. *Requests for post dividend warrants in respect of India five per cent. stock to apply to India four per cent. stock.*

An Act to make Powers of Attorney and Requests for Transmission of Dividend Warrants by Post relating to India Five per centum Stock applicable to India Four per centum Stock.

(19th March 1880.)

WHEREAS, in accordance with the conditions under which India five per cent. stock has been issued, the Secretary of State in Council of India has given notice that it is his intention to redeem that stock at par on the fifth day of July one thousand eight hundred and eighty:

And whereas the said Secretary of State has offered to holders of India five per cent. stock in exchange for such stock, and in lieu of repayment in cash, a like amount of India four per cent. stock bearing interest from the fifth day of April one thousand eight hundred and eighty, together with the payment on the fifth day of July one thousand eight hundred and eighty of one pound ten shillings per cent. on the amount of stock exchanged, so as to make up a sum equal to interest thereon at the rate of five pounds per cent. per annum for the half year ending on the fifth day of July one thousand eight hundred and eighty:

And whereas it is expedient that powers of attorney and requests for transmission of dividend warrants by post relating to India five per cent. stock should be made to extend and apply to India four per cent. stock:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as *India Stock (Powers of Attorney) Act, 1880.*

2. Every power of attorney in force at the time of the passing of this Act for the sale and transfer of any India five per cent. stock shall, unless it be legally revoked or become void, remain in force for the purpose of enabling the attorney or attorneys therein named or referred to to receive and give receipts for any principal sum of such India five per cent. stock, and to sell and transfer any India four per cent. stock that may be accepted in exchange for such five per cent. stock, and to receive the consideration money and give receipts for the same.

3. Every power of attorney in force at the time of the passing of this Act for the receipt of dividends on any India five per cent. stock shall, unless it be legally revoked or become void, remain in force for the purpose of enabling the attorney or attorneys therein named or referred to to receive the dividends to accrue on India four per cent. stock, and also to receive the said payment of one pound ten shillings per cent. on India five per cent. stock which will become payable on the fifth day of July one thousand eight hundred and eighty.

4. Every request for the transmission of dividend warrants by post relating to India five per cent. stock in force at the time of the passing of this Act, or which may hereafter be made, in pursuance of the Act of the 34th and 35th Victoria, chapter 29, shall, unless it be legally revoked or become void, extend and apply to India four per cent. stock as if the stock mentioned in such request were therein described as India four per cent. stock.

## CHAP. 12.

*Hypothec Abolition (Scotland) Act, 1880.*

## ABSTRACT OF THE ENACTMENTS.

1. *Landlord's hypothec to cease after 11th November 1881.*
2. *Landlord's remedies when rent is due and unpaid.*
3. *Provisions of s. 2 not to apply in addition to hypothec.*
4. *Short title.*

An Act to abolish the Landlord's Right  
of Hypothec for Rent in Scotland.  
(24th March 1880.)

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. From and after the eleventh day of November one thousand eight hundred and eighty-one, herein-after called the commencement of this Act, the landlord's right of hypothec for the rent of land, including the rent of any buildings thereon, exceeding two acres in extent, let for agriculture or pasture, shall cease and determine : Provided that nothing herein contained shall apply to any claim for rent due, or which may hereafter become due, under any lease, writing, or bargain current at the date of the commencement of this Act.

2. From and after the commencement of this Act the landlord of any land exceeding two acres in extent, and let for agriculture or pasture, shall, subject to the provisions of the preceding section of this Act, have the same rights and remedies against his tenant when six months rent is due and unpaid as is now provided by the law of Scotland when twelve months rent is due and unpaid, and shall also have the same rights and remedies against his tenant when twelve months rent is due and unpaid as is now provided by the law of Scotland when two years rent is due and unpaid, but subject always to the following provision ; (that is to say,) It shall not be lawful for the sheriff or sheriff-substitute to entertain any action for caution and removing, or for irritancy and removing, unless such action has been preceded by fourteen days written notice by registered post-office letter or otherwise to the tenant that such action is intended, nor in an action for caution and removing to decern the tenant to find caution for more than the arrears of rent and one year's rent further.

Provided also, that in the event of the removal or ejection of a tenant from such land in any year under the provisions of the Act of Sederunt anent

Removings of the fourteenth day of December one thousand seven hundred and fifty-six, and of this Act, on account of being in arrear of rent for six months or twelve months, as the case may be, the following farther provisions shall have effect :

(1.) A tenant so removed or ejected shall not thereby forfeit the rights of an outgoing tenant to which he would have been entitled if his lease had naturally expired at the date of removing or ejection, or at the last preceding term of Whitsunday or Martinmas in the event of the removing or ejection taking place between these terms :

(2.) When the removing or ejection takes place between the before-mentioned terms, the tenant shall be entitled to payment of or credit for the expenditure made by such tenant since the last preceding term on the labour, seed, and manure applied to any crop, other than an away-going crop, falling within the immediately preceding provision :

(3.) Where a tenant is removed or is ejected between the before-mentioned terms, he shall not, except as herein-after provided, be liable to pay for the occupation of such land after the immediately preceding term of Whitsunday or Martinmas more than a proportion of the rent effeiring to the period between such term and the date of removing or ejection : Provided always, unless otherwise expressly stipulated, that where any away-going crop to which a tenant is entitled is immature at the date of such removing or ejection, neither the tenant nor any one deriving right through him shall be entitled to carry away such crop at maturity until payment shall have been made to the landlord of the proportion of rent effeiring to the land under such crop for the period between the date of removing or ejection and the next term of Martinmas, the rent of such land being estimated according to the average rent of the whole land from which the tenant has been so removed or ejected.

3. The provisions of the second section of this Act shall not apply in any case in which the landlord's right of hypothec has not ceased and determined.

4. This Act may be cited as the *Hypothec Abolition (Scotland) Act, 1880.*

## CHAP. 13.

*Appropriation Act, 1880.*

## ABSTRACT OF THE ENACTMENTS.

*Grants out of Consolidated Fund.*

1. *Issue of 1,230,750l. 9s. 10d. out of the Consolidated Fund for the service of the years ending 31st March 1879 and 1880.*
2. *Issue of 8,322,177l. out of the Consolidated Fund.*
3. *Power for the Treasury to borrow.*

*Appropriation of Grants.*

4. *Appropriation of sums voted for supply services.*
5. *Declaration required in certain cases before receipt of sums appropriated.*
6. *Short title of Act.*

An Act to apply certain sums out of the Consolidated Fund to the service of the years ending on the thirty-first day of March one thousand eight hundred and seventy-nine, one thousand eight hundred and eighty, and one thousand eight hundred and eighty-one, and to appropriate the Supplies granted in this Session of Parliament. (24th March 1880.)

Most Gracious Sovereign,

WE, Your Majesty's most dutiful and loyal subjects, the Commons of the United Kingdom of Great Britain and Ireland in Parliament assembled, towards making good the supply which we have cheerfully granted to Your Majesty in this session of Parliament, have resolved to grant unto Your Majesty the sums herein-after mentioned; and do therefore most humbly beseech Your Majesty that it may be enacted; and be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

*Grants out of Consolidated Fund.*

1. The Commissioners of Her Majesty's Treasury for the time being may issue out of the Consolidated Fund of the United Kingdom of Great Britain and Ireland, and apply towards making good the supply granted to Her Majesty for the service of the years ending on the thirty-first day of March one thousand eight hundred and seventy-nine and one thousand eight hundred and eighty, the sum of one million, two hundred and thirty thousand, seven hundred and fifty pounds, nine shillings, and tenpence.

2. The Commissioners of Her Majesty's Treasury for the time being may issue out of the Consolidated Fund of the United Kingdom of Great Britain and Ireland, and apply towards making good the supply granted to Her Majesty for the service of the year ending on the thirty-first day of March one thousand eight hundred and eighty-one, the sum of eight millions, three hundred and twenty-two thousand, one hundred and seventy-seven pounds.

3. The Commissioners of Her Majesty's Treasury may borrow from time to time on the credit of the said sum of nine millions, five hundred and fifty-two thousand, nine hundred and twenty-seven pounds, nine shillings, and tenpence, any sum or sums of equal or less amount in the whole, and shall repay the moneys so borrowed, with interest not exceeding five pounds per centum per annum, out of the growing produce of the Consolidated Fund at any period not later than the next succeeding quarter to that in which the said moneys were borrowed.

Any moneys so borrowed shall be placed to the credit of the account of Her Majesty's Exchequer, and shall form part of the said Consolidated Fund, and be available in any manner in which such fund is available.

*Appropriation of Grants.*

4. All sums granted by this Act and the other Act mentioned in Schedule (A.) annexed to this Act out of the said Consolidated Fund towards making good the supply granted to Her Majesty, amounting, as appears by the said Schedule, in the aggregate to the sum of thirty millions, one hundred and seventy-seven thousand, one hundred and twenty-nine pounds, thirteen shillings, and one penny, are appropriated and shall be deemed to have been appropriated as from the date of the passing of the first of the

Acts mentioned in the said Schedule (A.) for the purposes and services expressed in Schedule (B.) annexed hereto.

The abstract of schedules and schedules annexed hereto, with the notes (if any) to such schedules, shall be deemed to be part of this Act in the same manner as if they had been contained in the body thereof.

5. A person shall not receive any part of a grant which may be made in pursuance of this Act for half pay or army, navy, or civil non-effective services until he has subscribed such declaration as may from time to time be prescribed by a warrant of the Commissioners of

Her Majesty's Treasury before one of the persons prescribed by such warrant.

Provided that, whenever any such payment is made at more frequent intervals than once in a quarter, the Commissioners of Her Majesty's Treasury may dispense with the production of more than one declaration in respect of each quarter.

Any person who makes a declaration for the purpose of this section, knowing the same to be untrue in any material particular, shall be guilty of a misdemeanor.

6. This Act may be cited for all purposes as the Appropriation Act, 1880.

—o-o-o—  
ABSTRACT  
OF  
SCHEDULES (A.) and (B.) to which this Act refers,  
SCHEDULE (A.)

	£	s.	d.
Grants out of the Consolidated Fund - - - - -	30,177,129	13	1

SCHEDULE (B.)—APPROPRIATION OF GRANTS.

	£	s.	d.
Part 1. Deficiencies, 1878-79 - - - - -	5,550	9	10
„ 2. Supplementary, 1879-80 - - - - -	556,867	-	-
„ 3. Exchequer Bonds, 1879-80 - - - - -	3,410,000	-	-
„ 4. Charges defrayed by the War Office on account of India, 1879-80 - - - - -	15,050	3	3
„ 5. Abyssinian Expedition (of 1867-68), 1879-80 - - - - -	985	-	-
„ 6. (a.) War in South Africa, Vote of Credit, 1879-80 - - - - -	703,000	-	-
„ „ (b.) War in South Africa, Vote of Credit, 1879-80 (Griqualand West) - - - - -	222,200	-	-
„ „ (c.) War in South Africa, Vote of Credit, 1879-80 (Sikukuni Expedition, &c.) - - - - -	300,000	-	-
	5,213,652	13	1
1880-81 :—			
„ 7. Navy - - - - -	On account - 2,623,229	-	-
„ 8. Army - - - - -	15,541,300	-	-
„ 9. Army (Indian Home Charges) - - - - -	1,100,000	-	-
	£		
„ 10. Civil Services, Class I. - On account	346,900		
„ 11. Ditto, Class II. - On account	535,450		
„ 12. Ditto, Class III. - On account	1,356,900		
„ 13. Ditto, Class IV. - On account	1,696,000		
„ 14. Ditto, Class V. - On account	159,350		
„ 15. Ditto, Class VI. - On account	282,100		
„ 16. Ditto, Class VII. - On account	15,700		
TOTAL CIVIL SERVICES - - - - -	On account - 4,392,400	-	-
„ 17. Revenue departments, &c. - - - - -	On account - 1,270,000	-	-
„ 18. Advances for Greenwich Hospital and School - - - - -	On account - 36,548	-	-
	£		
	30,177,129	13	1

### SCHEDULE (A.)

### GRANTS OUT OF THE CONSOLIDATED FUND.

**For the service of the years ending 31st March 1879 and 1880;**

Under Act 43 Vict. cap. 5.	-	-	-	-	-	-	3,982,902	3	3
Under this Act	-	-	-	-	-	-	1,230,750	9	10
For the service of the year ending 31st March 1881; viz.									
Under Act 43 Vict. cap. 5.	-	-	-	-	16,641,300	-			
Under this Act	-	-	-	-	8,322,177	-			
							24,963,477	-	-
<b>TOTAL</b>	-	-	-	-			<b>£30,177,129</b>	<b>13</b>	<b>1</b>

**SCHEDULE (B.)—PART 1.**

### DEFICIENCIES.

**SCHEDULE of SUMS granted to make good deficiencies on the several grants herein particularly mentioned for the year ended on the 31st day of March 1879; viz. :—**

CIVIL SERVICES.								<i>£</i>	<i>s.</i>	<i>d.</i>
CLASS I.										
Furniture of Public Offices	-	-	-	-	-	-	-	64	19	7
CLASS II.										
Chief Secretary for Ireland, Offices	-	-	-	-	-	-	-	125	17	3
CLASS III.										
Land Registry	-	-	-	-	-	-	-	23	11	7
CLASS IV.										
National Gallery	-	-	-	-	-	-	-	469	5	6
Deep Sea Exploring Expedition (Report)	-	-	-	-	-	-	-	409	1	8
Queen's University, Ireland	-	-	-	-	-	-	-	173	19	7
CLASS VI.										
Superannuation and Retired Allowances	-	-	-	-	-	-	-	1,410	13	6
Relief of Distressed British Seamen Abroad	-	-	-	-	-	-	-	2,873	1	2
TOTAL								-	-	
								5,550	9	10

**SCHEDULE (B.)—PART 2.**

### SUPPLEMENTARY.

**SCHEDULE of SUPPLEMENTARY SUMS granted to defray the charges for the Services herein particularly mentioned for the year ended on the 31st day of March 1880; viz. :—**

	CLASS I.	<i>£</i> .
Royal Palaces - " - "	- - -	2,924
Marlborough House - " - "	- - -	300
Royal Parks and Pleasure Gardens - " - "	- - -	5,500
Public Buildings, Great Britain - " - "	- - -	6,700
Furniture of Public Offices - " - "	- - -	1,400
Metropolitan Police Court Buildings - " - "	- - -	150
New Courts of Justice and Offices - " - "	- - -	36,404
Public Buildings, Ireland - " - "	- - -	11,111
Shannon Navigation - " - "	- - -	5,000
Diplomatic and Consular Buildings - " - "	- - -	8,386

## CLASS II.

	£
Treasury, including Parliamentary Counsel	1,250
Foreign Office	2,400
Charity Commissioners, including Endowed Schools Department	2,921
Civil Service Commission	1,085
Local Government Board, England	16,763
National Debt Office	600
Stationery and Printing	36,000
Lunacy Commission, Scotland	180
Lord Lieutenant's Household	36
Local Government Board, Ireland	2,700
Public Works Offices, Ireland	2,000

## CLASS III.

Law Charges, England	18,761
Public Prosecutor's Office	965
Criminal Prosecutions, Sheriffs' Expenses, &c.	5,000
Queen's Bench, &c. Divisions, High Court of Justice, England	9,800
County Courts	25,206
Police, Counties and Boroughs, Great Britain	1,300
Prisons, England	216,245
County Prisons, &c., Great Britain	267
Reformatory and Industrial Schools, Great Britain	435
Queen's Bench, &c. Divisions of the High Court of Justice, Ireland	342
Probate, &c. Registries, High Court of Justice, Ireland	125
Registry of Deeds, Ireland	156
County Court Officers, &c., Ireland	7,300
Royal Irish Constabulary	7,000

## CLASS IV.

National Portrait Gallery	62
London University	203
Public Education, Ireland	8,800
Teachers' Pension Office, Ireland	810

## CLASS V.

Diplomatic Services	35,170
Consular Services	2,000
Colonies, Grants in Aid	8,704
Tonnage Bounties, &c.	4,450
Subsidies to Telegraph Companies	10,425
Treasury Chest Robbery	136

## CLASS VI.

Superannuation and Retired Allowances	13,000
Relief of Distressed British Seamen Abroad	3,000
Pauper Lunatics, Ireland	2,716

## CLASS VII.

Temporary Commissions	9,110
Repayments to the Civil Contingencies Fund	9,869

## REVENUE DEPARTMENTS.

Customs	4,300
Post Office Packet Service	7,400
Total	£556,867

## SCHEDULE (B.)—PART 3.

## EXCHEQUER BONDS.

To pay off and discharge Exchequer Bonds which became due and payable during the year ending on the 31st day of March 1880 - - - - £ 3,410,000

## SCHEDULE (B.)—PART 4.

## CHARGES DEFRAID BY THE WAR OFFICE ON ACCOUNT OF INDIA.

For the repayment to the War Office, during the year ending on the 31st day of March 1880, of Charges which it has defrayed on behalf of the India Office - £ s. d. 15,050 3 3

## SCHEDULE (B.)—PART 5.

## ABYSSINIAN EXPEDITION.

Towards defraying the Expenses which will come in course of payment during the year ending on the 31st day of March 1880, for the Abyssinian Expedition of 1867-68 - £ 985 - -

## SCHEDULE (B.)—PART 6.

## WAR IN SOUTH AFRICA, VOTE OF CREDIT.

a.) Towards defraying the Expenses, beyond the ordinary grants of Parliament, which will come in course of payment during the year ending on the 31st day of March 1880, in consequence of the War in South Africa - £ 703,000  
 (b.) Towards defraying the charge which will come in course of payment during the year ending on the 31st day of March 1880, in aid of Expenditure incurred by the Colonial Government of Griqualand West in suppressing a Native Rebellion - 222,200  
 (c.) Towards defraying the Expenses, beyond the ordinary grants of Parliament, which will come in course of payment during the year ending on the 31st day of March 1880, in connexion with the Expedition against the Chief Sikukuni, and for the occupation of the Transvaal - 300,000

## SCHEDULE (B.)—PART 7.

## NAVY.

SCHEDULE of SUMS granted to defray the charges of the NAVY SERVICES herein particularly mentioned, which will come in course of payment during the year ending on the 31st day of March 1881; viz. :—

No.		Sums not exceeding	
			£
1.	For wages, &c. to 58,800 seamen and marines - - -	On account -	680,384
2.	For victuals and clothing for seamen and marines - - -	On account -	253,381
3.	For the expenses of the Admiralty Office - - -	On account -	44,871
4.	For the expense of the coast guard service, the royal naval reserve, and seamen and marine pensioners reserve, and royal naval artillery volunteers - - -	On account -	48,569
5.	For the expense of the several scientific departments of the navy - - -	On account -	28,276
6.	For the expense of the dockyards and naval yards at home and abroad - - -	On account -	335,896
7.	For the expense of the victualling yards at home and abroad - - -	On account -	17,790
8.	For the expense of the medical establishments at home and abroad - - -	On account -	15,861
9.	For the expense of the Marine Divisions - - -	On account -	5,350
10.	Sect. 1. For naval stores for the building, repairing, and outfitting the fleet and coast guard - - -	On account -	252,750
10.	Sect. 11. For steam machinery, and ships built by contract, &c. - - -	On account -	192,250

		Sums not exceeding.
No.		£
11.	For new works, buildings, machinery, and repairs in the naval establishments	On account - 139,737
12.	For medicines, medical stores, &c.	On account - 18,787
13.	For martial law, &c.	On account - 2,312
14.	For the expense of various miscellaneous services	On account - 33,940
15.	For half pay, reserved half pay, and retired pay to officers of the navy and marines	On account - 223,789
{ 16.	Sect. 1. For military pensions and allowances	On account - 205,804
{ 16.	Sect. 11. For civil pensions and allowances	On account - 80,607
17.	For freight of ships, for the victualling and conveyance of troops, on account of the army department	On account - 42,875
TOTAL NAVY SERVICES - £		<u>2,623,229</u>

## SCHEDULE (B).—PART 8.

## ARMY.

SCHEDULE of SUMS granted to defray the charges of the ARMY SERVICES herein particularly mentioned, which will come in course of payment during the year ending on the 31st day of March 1881; viz. :—

		Sums not exceeding
No.		£
1.	For the general staff and regimental pay, allowances, and charges of Her Majesty's land forces at home and abroad, exclusive of charges on India	4,579,000
2.	For divine service	50,700
3.	For administration of military law	29,800
4.	For medical establishments and services	308,400
5.	For the pay and allowances of a force of militia, not exceeding 134,028 men, including 30,000 militia reserve	552,900
6.	For the yeomanry cavalry pay and allowances	74,400
7.	For the volunteer corps pay and allowances	539,600
8.	For the pay and allowances of a number of army reserve first class, not exceeding 23,000, and of the army reserve second class	208,800
9.	For commissariat and ordnance store establishments, wages, &c.	386,700
10.	For provisions, forage, fuel, transport and other services	2,790,000
11.	For clothing establishments, services, and supplies	825,100
12.	For the supply, manufacture, and repair of warlike and other stores	1,185,000
13.	For superintending establishment of, and expenditure for, works, buildings, and repairs at home and abroad	853,000
14.	For establishments for military education	162,200
15.	For miscellaneous effective services	36,400
16.	For the administration of the army	215,900
17.	For rewards for distinguished services, &c., exclusive of charges on India	33,900
18.	For pay of general officers, exclusive of charges on India	92,000
19.	For retired full pay, retired pay, half pay, pensions, and gratuities, for reduced and retired officers, including payments allowed by Army Purchase Commissioners, exclusive of charges on India	892,700
20.	For widows pensions, &c., exclusive of charges on India	126,200
21.	For pensions for wounds	16,500
22.	For Chelsea and Kilmainham hospitals, and the in-pensioners thereof	34,300
23.	For the out-pensioners of Chelsea Hospital, &c., exclusive of charges on India	1,312,000
24.	For superannuation allowances	196,500
25.	For the non-effective services of the militia, yeomanry cavalry, and volunteer corps	39,300
TOTAL ARMY SERVICES - £		<u>15,541,300</u>

## SCHEDULE (B.)—PART 9.

## ARMY (INDIAN HOME CHARGES).

For the sum to be transferred in aid of Army Grants to meet the charge incurred in recruiting and training officers and men, and in defraying the non-effective expenditure for the regular forces serving in India, which will come in course of payment during the year ending on the 31st day of March 1881 - - - £

1,100,000

## SCHEDULE (B.)—PART 10.

## CIVIL SERVICES.—CLASS I.

SCHEDULE of SUMS granted to defray the charges of the several CIVIL SERVICES herein particularly mentioned, which will come in course of payment during the year ending on the 31st day of March 1881; viz.:—

No.	Sums not exceeding	
		£
1. For the maintenance and repair of the royal palaces - -	On account -	9,500
2. For the maintenance and repair of Marlborough House - -	On account -	600
3. For the royal parks and pleasure gardens - - -	On account -	28,200
4. For the buildings of the Houses of Parliament - - -	On account -	9,000
5. For the maintenance and repair of public buildings in Great Britain and the Isle of Man; for providing the necessary supply of water; for rents of houses hired for accommodation of public departments, and charges attendant thereon, &c. -	On account -	29,200
6. For the supply and repair of furniture in the public departments of Great Britain - - -	On account -	4,100
7. For the expenses of the Customs, Inland Revenue, Post Office, and Post Office Telegraph Buildings, in Great Britain, including furniture, fuel, and sundry miscellaneous services - -	On account -	46,000
8. For new buildings for county courts, maintenance and repair of courts, supply of furniture, fuel, &c., and other charges attendant thereon - - -	On account -	12,700
9. For charges connected with Metropolitan Police Court Buildings -	On account -	7,000
10. For one half of the expense of erecting or improving court houses or offices for the sheriff courts in Scotland, and the expense of maintaining the courts erected or improved - -	On account -	2,100
11. For the purchase of a site, erection of building, and other expenses for new courts of justice and offices belonging thereto - -	On account -	28,000
12. For the survey of the United Kingdom, including the revision of the survey of Ireland, maps for use in proceedings before the Land Judges in Ireland, publication of maps, and engraving the geological survey - - -	On account -	33,400
13. For erecting and maintaining new buildings, including rents, &c., for the Department of Science and Art - - -	On account -	5,100
14. For maintenance and repair of the British Museum buildings, for rents of premises, supply of water, fuel, &c., and charges attendant thereon - - -	On account -	1,200
15. For the erection of a Natural History Museum - - -	On account -	7,500
16. For a grant in aid of the new buildings for the University of Edinburgh - - -		—
17. For maintaining certain harbours, &c. under the Board of Trade -	On account -	5,000
18. For rates and contributions in lieu of rates in respect of Government property, and for salaries and expenses of the rating of Government property department - - -	On account -	65,000

No.		Sums not exceeding	
			£
19.	For contribution to the funds for the establishment and maintenance of a fire brigade in the metropolis - - -	On account -	2,500
20.	For erection, repairs, and maintenance of the several public buildings under the department of the Commissioners of Public Works in Ireland - - -	On account -	37,200
21.	For expenses preparatory to the erection of the Museum of Science and Art in Dublin - - -	On account -	300
22.	For works to regulate the flood waters of the River Shannon - -	On account -	5,000
23.	For erecting and maintaining certain lighthouses abroad - -	On account -	2,800
24.	For diplomatic and consular buildings, including rents and furniture, and for the maintenance of certain cemeteries abroad -	On account -	5,500
TOTAL CIVIL SERVICES, CLASS I. - £			<u>346,900</u>

## SCHEDULE (B.)—PART 11.

## CIVIL SERVICES.—CLASS II.

SCHEDULE of SUMS granted to defray the charges of the several CIVIL SERVICES herein particularly mentioned, which will come in course of payment during the year ending on the 31st day of March 1881; viz. :—

No.		Sums not exceeding	
			£
1.	For salaries and expenses in the offices of the House of Lords -	On account -	11,000
2.	For salaries and expenses in the offices of the House of Commons -	On account -	12,600
3.	For salaries and expenses of the department of Her Majesty's Treasury and in the office of the Parliamentary Counsel -	On account -	15,100
4.	For salaries and expenses of the office of Her Majesty's Secretary of State for the Home Department and subordinate offices -	On account -	22,500
5.	For salaries and expenses of the department of Her Majesty's Secretary of State for Foreign Affairs - - -	On account -	18,100
6.	For salaries and expenses of the department of Her Majesty's Secretary of State for the Colonies, including certain expenses connected with Emigration - - -	On account -	9,500
7.	For salaries and expenses of the department of Her Majesty's Most Honourable Privy Council and subordinate departments -	On account -	8,000
8.	For salaries and expenses of the office of the Lord Privy Seal -	On account -	700
9.	For salaries and expenses of the office of the Committee of Privy Council for Trade, and subordinate departments - -	On account -	42,200
10.	For salaries and expenses of the Charity Commission for England and Wales - - -	On account -	8,100
11.	For salaries and expenses of the Civil Service Commission -	On account -	7,100
12.	For salaries and expenses of the office of the Copyhold, Inclosure, and Tithe Commission - - -	On account -	4,300
13.	For imprest expenses under the Inclosure and Drainage Acts -	On account -	2,100
14.	For salaries and expenses of the department of the Comptroller and Auditor General, including the Chancery Audit Branch -	On account -	14,000
15.	For salaries and expenses of the Registry of Friendly Societies -	On account -	1,600
16.	For salaries and expenses of the Local Government Board, including various grants in aid of local taxation - - -	On account -	86,200
17.	For salaries and expenses of the office of the Commissioners in Lunacy in England - - -	On account -	3,800
18.	For salaries and expenses of the Mint, including the expenses of the coinage - - -	On account -	16,600

		Sums not exceeding	
No.			£
19.	For salaries and expenses of the National Debt Office - - -	On account -	4,400
20.	For charges connected with the Patent Law Amendment Act, the Registration of Trade Marks Act, and the Registration of Designs Act - - - - -	On account -	7,000
21.	For salaries and expenses of the department of Her Majesty's Paymaster General in London and Dublin - - - - -	On account -	6,400
22.	For salaries and expenses of the establishments under the Public Works Loan Commissioners, and the West India Islands Relief Commissioners - - - - -	On account -	2,600
23.	For salaries and expenses of the Public Record Office in England - - - - -	On account -	5,300
24.	For salaries and expenses of the department of the Registrar General of Births, &c. in England - - - - -	On account -	12,000
25.	For stationery, printing, and paper, binding, and printed books, for the several departments of Government in England, Scotland, and Ireland, and some dependencies, and for the two Houses of Parliament; for the salaries and expenses of the Establishment of the Stationery Office, and the cost of Stationery Office publications, and of the Gazette Offices; and for sundry miscellaneous services, including a grant in aid of the publication of Parliamentary Debates - - - - -	On account -	115,000
26.	For salaries and expenses of the office of Woods, Forests, and Land Revenues, and of the office of Land Revenue Records and Inrolments - - - - -	On account -	6,000
27.	For salaries and expenses of the office of the Commissioners of Her Majesty's Works and Public Buildings - - - - -	On account -	10,300
28.	For Her Majesty's foreign and other secret services - - - - -	On account -	5,800
29.	For salaries and expenses of the department of the Queen's and Lord Treasurer's Remembrancer in Exchequer, Scotland, of certain officers in Scotland, and other charges formerly on the hereditary revenue - - - - -	On account -	1,700
30.	For salaries and expenses of the Fishery Board in Scotland, and for grants in aid of piers or quays - - - - -	On account -	3,500
31.	For salaries and expenses of the Board of Lunacy in Scotland - - - - -	On account -	1,500
32.	For salaries and expenses of the department of the Registrar General of Births, &c. in Scotland - - - - -	On account -	1,900
33.	For salaries and expenses of the Board of Supervision for Relief of the Poor, and for expenses under the Public Health and Vaccination Acts, including certain grants in aid of local taxation in Scotland - - - - -	On account -	4,700
34.	For salaries of the officers and attendants of the household of the Lord Lieutenant of Ireland and other expenses - - - - -	On account -	1,900
35.	For salaries and expenses of the offices of the Chief Secretary to the Lord Lieutenant of Ireland, in Dublin and London, and subordinate departments - - - - -	On account -	9,600
36.	For salaries and expenses of the office of the Commissioners of Charitable Donations and Bequests for Ireland - - - - -	On account -	550
37.	For salaries and expenses of the Local Government Board, in Ireland, including various grants in aid of local taxation - - - - -	On account -	32,800
38.	For salaries and expenses of the office of Public Works in Ireland - - - - -	On account -	7,700
39.	For salaries and expenses of the Public Record Office, and of the Keeper of the State Papers in Ireland - - - - -	On account -	1,500
40.	For salaries and expenses of the department of the Registrar General of Births, &c., and for expenses of the collection of agricultural and emigration statistics in Ireland - - - - -	On account -	4,100
41.	For salaries and expenses of the general valuation and boundary survey of Ireland - - - - -	On account -	5,700
TOTAL CIVIL SERVICES, CLASS II. - - - £			<u>535,450</u>

## SCHEDULE (B.)—PART 12.

## CIVIL SERVICES.—CLASS III.

SCHEDULE of SUMS granted to defray the charges of the several CIVIL SERVICES herein particularly mentioned, which will come in course of payment during the year ending on the 31st day of March 1881; viz. :—

No.	Sums not exceeding	
	£	
1. For the salaries of the law officers, the salaries and expenses of the department of the Solicitor for the affairs of Her Majesty's Treasury, and of the department of the Queen's Proctor for divorce interventions, the costs of prosecutions, including those relating to the coin and to bankruptcy, and of other legal proceedings conducted by those departments, and various other legal expenses, including Statute Law Revision and Parliamentary Agency - - - - -	On account -	18,200
2. For the salaries and expenses of the office of the Director of Public Prosecutions - - - - -	On account -	1,100
3. For criminal prosecutions at assizes and quarter sessions in England, including adjudications under the Criminal Justice and the Juvenile Offenders Acts, sheriffs expenses, salaries to clerks of assize and other officers, and for compensation to clerks of the peace and others, and for expenses incurred under Extradition Treaties - - - - -	On account -	50,100
4. For such of the salaries and expenses of the Chancery Division of the High Court of Justice, of the Court of Appeal, and of the Supreme Court of Judicature, exclusive of the Central Office, as are not charged on the Consolidated Fund - - - - -	On account -	41,000
5. For the salaries and expenses of the Central Office of the Supreme Court of Judicature, the salaries and expenses of the Judges' Clerks and other officers, of the District Registrars of the High Court, the remuneration of the Judges' Marshals, and certain circuit expenses - - - - -	On account -	25,700
6. For salaries and expenses of the Registries of Probate and Divorce and Matrimonial Causes, &c., in the Probate, Divorce, and Admiralty Division of the High Court of Justice - - - - -	On account -	23,300
7. For salaries and expenses of the offices of the Admiralty Registrar and Marshal of the Probate, Divorce, and Admiralty Division of the High Court of Justice - - - - -	On account -	3,000
8. For salaries and expenses of the office of the Wreck Commissioner - - - - -	On account -	3,400
9. For salaries and expenses of the London Bankruptcy Court - - - - -	On account -	9,200
10. For salaries and expenses connected with the County Courts - - - - -	On account -	114,100
11. For salaries and expenses of the Office of Land Registry - - - - -	On account -	1,400
12. For the expense of revising barristers in England - - - - -	-	-
13. For salaries and expenses of the police courts of London and Sheerness - - - - -	On account -	3,400
14. For contribution toward the expenses of the metropolitan police, and of the horse patrol, and Thames police, and for the salaries of the Commissioner, Assistant Commissioners, and Receiver - - - - -	On account -	150,000
15. For certain expenses connected with the police in counties and boroughs in England and Wales, and with the police in Scotland - - - - -	On account -	800
16. For the superintendence of convict establishments and for the maintenance of convicts in convict establishments in England and the Colonies - - - - -	On account -	109,200
17. For the salaries and expenses of the Commissioners and other officers appointed under the 6th and 7th sections of the Prison Act, 1877, and the expenses of the several prisons in England and Wales to which that Act applies - - - - -	On account -	119,600

No.		Sums not exceeding	
		£	
18.	For the maintenance of juvenile offenders in reformatory, industrial, and day industrial schools in Great Britain, and for the salaries and expenses of the Inspectors of Reformatories -	On account -	66,000
19.	For the maintenance of criminal lunatics in Broadmoor Criminal Lunatic Asylum, England, and of one criminal lunatic in Bethlem Hospital -	On account -	6,500
20.	For salaries and expenses of the Lord Advocate's department and others connected with criminal proceedings in Scotland, including certain allowances under the Act 15 & 16 Vict. c. 83.	On account -	16,700
21.	For salaries and expenses of the Courts of Law and Justice in Scotland and other legal charges -	On account -	15,500
22.	For salaries and expenses of the offices in Her Majesty's General Register House, Edinburgh -	On account -	9,100
23.	For the expenses of the Prison Commissioners for Scotland, and of the prisons under their control, including the maintenance of criminal lunatics and the preparation of judicial statistics -	On account -	20,400
24.	For the expense of criminal prosecutions and other law charges in Ireland, including certain allowances under the Act 15 & 16 Vict. c. 83. -	On account -	21,700
25.	For salaries and expenses of the Chancery Division (excluding the Land Judges' offices) of the High Court of Justice and of the Court of Appeal in Ireland -	On account -	9,600
26.	For salaries and expenses of the Queen's Bench, Common Pleas, and Exchequer Divisions of Her Majesty's High Court of Justice in Ireland, including provision for certain officers of the Supreme Court of Judicature in Ireland, and for the trial of election petitions -	On account -	7,100
27.	For the salaries and expenses of the Land Judges' offices in the Chancery Division of Her Majesty's High Court of Justice in Ireland -	On account -	2,900
28.	For the salaries and expenses of the Principal and District Registries of the Probate and Matrimonial Division of Her Majesty's High Court of Justice in Ireland, including certain officers of the court -	On account -	2,900
29.	For salaries and incidental expenses of the Court of Bankruptcy in Ireland -	On account -	2,600
30.	For salaries and expenses of the Admiralty Court Registry in Ireland -	On account -	450
31.	For salaries and expenses of the Office for the Registration of Deeds in Ireland -	On account -	5,000
32.	For salaries and expenses in the Office for the Registration of Judgments in Ireland -	On account -	750
33.	For the salaries, allowances, and expenses of various county court officers, and of magistrates in Ireland, and of the revising barristers of the city of Dublin -	On account -	20,600
34.	For salaries and expenses of the Commissioners of Police, of the police courts and of the metropolitan police establishment of Dublin -	On account -	34,600
35.	For the expenses of the constabulary force in Ireland -	On account -	380,000
36.	For the expense of the superintendence of prisons, and of the maintenance of prisoners in prisons in Ireland, and of the registration of habitual criminals -	On account -	36,500
37.	For the expenses of reformatories and industrial schools in Ireland -	On account -	22,800
38.	For the maintenance of criminal lunatics in Dundrum Criminal Lunatic Asylum, Ireland -	On account -	1,700
TOTAL CIVIL SERVICES, CLASS III. -		£	1,356,900

## SCHEDULE (B.)—PART 13.

## CIVIL SERVICES.—CLASS IV.

SCHEDULE of SUMS granted to defray the charges of the several CIVIL SERVICES herein particularly mentioned, which will come in course of payment during the year ending on the 31st day of March 1881; viz. :—

No.		Sums not exceeding	
		£	
1.	For public education in England and Wales, including the expenses of the Education Office in London - - -	On account -	970,000
2.	For salaries and expenses of the Department of Science and Art, and of the establishments connected therewith - - -	On account -	110,000
3.	For salaries and expenses of the British Museum, including the amount required for furniture, fittings, &c. - - -	On account -	50,000
4.	For salaries and expenses of the National Gallery - - -	On account -	4,400
5.	For salaries and expenses of the National Portrait Gallery - - -	On account -	600
6.	For grants in aid of the expenditure of certain learned societies in Great Britain and Ireland - - -	On account -	8,000
7.	For salaries and expenses of the University of London - - -	On account -	2,800
8.	For preparing an account of the scientific results of the expedition of Her Majesty's ship "Challenger" in 1873, 1874, 1875, and 1876, to investigate the physical and biological conditions of the great ocean basins, and of arranging the collections made during the expedition - - -	On account -	1,200
9.	For the salaries and expenses of the Royal Commission appointed in connexion with the International Exhibitions at Sydney and Melbourne - - -	On account -	2,000
10.	For public education in Scotland - - -	On account -	220,000
11.	For grants to Scottish universities - - -	On account -	4,700
12.	For the annuity to the Board of Trustees of manufactures in Scotland, in discharge of equivalents under the Treaty of Union, to be applied in maintenance of the National Gallery, School of Art and Museum of Antiquities, Scotland, and for the exhibition of the Torrie Collection of Works of Art, and for other purposes - - -	On account -	600
13.	For public education under the Commissioners of National Education in Ireland - - -	On account -	315,000
14.	For the salaries and expenses of the National School Teachers' Superannuation Office, Dublin - - -	On account -	500
15.	For the salary and expenses of the Office of the Commissioners of Education in Ireland appointed for the regulation of endowed schools - - -	On account -	200
16.	For salaries and expenses of the National Gallery of Ireland, and for the purchase of pictures - - -	On account -	600
17.	For expenses of the Queen's University in Ireland - - -	On account -	1,400
18.	In aid of the expenses of the Queen's Colleges in Ireland - - -	On account -	3,500
19.	In aid of the expenses of the Royal Irish Academy, &c. - - -	On account -	500
TOTAL CIVIL SERVICES, CLASS IV. - £			<u>1,696,000</u>

## SCHEDULE (B).—PART 14.

## CIVIL SERVICES.—CLASS V.

SCHEDULE of SUMS granted to defray the charges of the several CIVIL SERVICES herein particularly mentioned, which will come in course of payment during the year ending on the 31st day of March 1881; viz. :—

No.		Sums not exceeding	
			£
1.	For expenses of Her Majesty's embassies and missions abroad -	On account -	58,000
2.	For consular establishments abroad, and for other expenditure chargeable on the Consular Vote -	On account -	62,500
3.	In aid of colonial local revenue, and for the salaries and allowances of governors, &c., and for other expenses in certain colonies -	On account -	9,000
4.	For certain non-effective charges connected with the Orange River Territory and the island of St. Helena -	On account -	600
5.	For salaries and expenses of the three representatives of Her Majesty's Government on the Council of Administration of the Suez Canal Company -	On account -	450
6.	For expenses of the mixed commissions established under the treaties with foreign powers for suppressing the traffic in slaves, and of other establishments in connexion with that object, including the Muscat subsidy -	On account -	1,800
7.	For tonnage bounties, bounties on slaves, costs of captors, &c., and expenses of the Liberated African Department -	On account -	3,000
8.	For defraying the additional expenditure entailed upon the Government of Cyprus by the augmentation of the police force, rendered necessary by the reduction of the military garrison of the island -	On account -	6,500
9.	For subsidies to telegraph companies -	On account -	17,500
TOTAL CIVIL SERVICES, CLASS V. -			<u>159,350</u>

## SCHEDULE (B).—PART 15.

## CIVIL SERVICES.—CLASS VI.

SCHEDULE of SUMS granted to defray the charges of the several CIVIL SERVICES herein particularly mentioned, which will come in course of payment during the year ending on the 31st day of March 1881; viz. :—

No.		Sums not exceeding	
			£
1.	For superannuation and retired allowances to persons formerly employed in the public service, and for compassionate or other special allowances and gratuities awarded by the Commissioners of Her Majesty's Treasury -	On account -	200,000
2.	For pensions to masters and seamen of the merchant service, and to their widows and children -	On account -	7,100
3.	For the relief of distressed British seamen abroad -	On account -	8,100
4.	In aid of the local cost of maintenance of pauper lunatics in England and Wales -		—
5.	In aid of the local cost of maintenance of pauper lunatics in Scotland -		—
6.	In aid of the local cost of maintenance of pauper lunatics in Ireland -	On account -	60,500
7.	For the support of certain hospitals and infirmaries in Ireland -	On account -	4,300
8.	For making good the deficiency arising from payments for interest to savings banks and friendly societies -		—

		Sums not exceeding
		£
No.		
9.	For miscellaneous, charitable, and other allowances in Great Britain - - - - -	On account - 1,000
10.	For certain miscellaneous, charitable, and other allowances in Ireland - - - - -	On account - 1,100
TOTAL CIVIL SERVICES, CLASS VI. - £		<u>282,100</u>

## SCHEDULE (B.)—PART 16.

## CIVIL SERVICES.—CLASS VII.

SCHEDULE of SUMS granted to defray the charges of the several CIVIL SERVICES herein particularly mentioned, which will come in course of payment during the year ending on the 31st day of March 1881; viz. :—

		Sums not exceeding
		£
No.		
1.	For salaries and incidental expenses of temporary commissions and committees, including special inquiries - - -	On account - 14,000
2.	For certain miscellaneous expenses - - - - -	On account - 1,700
TOTAL CIVIL SERVICES, CLASS VII. - £		<u>15,700</u>

## SCHEDULE (B.)—PART 17.

## REVENUE DEPARTMENTS, &amp;c.

SCHEDULE of SUMS granted to defray the charges of the several REVENUE DEPARTMENTS, &c. herein particularly mentioned, which will come in course of payment during the year ending on the 31st day of March 1881; viz. :—

		Sums not exceeding
		£
No.		
1.	For salaries and expenses of the Customs Department - - -	On account - 110,000
2.	For salaries and expenses of the Inland Revenue Department - - -	On account - 200,000
3.	For salaries and expenses of the Post Office services, the expenses of Post Office savings banks, and Government annuities and insurances, and the collection of the Post Office revenue - - -	On account - 410,000
4.	For the Post Office packet service - - - - -	On account - 200,000
5.	For salaries and expenses of the Post Office telegraph service - - -	On account - 350,000
TOTAL REVENUE DEPARTMENTS - £		<u>1,270,000</u>

## SCHEDULE (B.)—PART 18.

## GREENWICH HOSPITAL AND SCHOOL.

Advances during the year ending on the 31st day of March 1881 for defraying the expenses of Greenwich Hospital and School -	On account - <u>36,548</u>
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## CHAP. 14.

*Customs and Inland Revenue Act, 1880.*

## ABSTRACT OF THE ENACTMENTS.

1. *Short title.*

## PART I.

*Customs.*2. *Import duties on tea.*3. *Foreign spirits may be bottled in warehouse for home consumption.*

## PART II.

*Taxes.*4. *Grant of duties of income tax.*5. *Provisions of Income Tax Acts to apply to duties hereby granted.*6. *Provisions of Income Tax Acts to apply to duties to be granted for succeeding year.*7. *Assessment of income tax under Schedules (A.) and (B.), and of the inhabited house duties for the year 1880-81.*8. *Exemption from income tax repealed in case of certain industrial and provident societies.*

## PART III.

*Stamps.*9. *Grant of duties on probates and letters of administration.*10. *Account to accompany affidavit on application for probate or letters of administration.*11. *Power to commute legacy duty or succession duty presumptively payable in certain cases.*12. *Discharge of executor, &c. from claim to duty on distribution of fund.*13. *Relief from legacy duty when whole personal estate is less than 100l.*

## SCHEDULE.

An Act to grant certain Duties of Customs and Inland Revenue, to alter other Duties, and to amend the Laws relating to Inland Revenue.  
(24th March 1880.)

1. This Act may be cited as the Customs and Inland Revenue Act, 1880.

## PART I.

*Customs.*

2. The duties of customs now chargeable upon tea shall continue to be levied and charged on and after the first day of August one thousand eight hundred and eighty until the first day of August one thousand eight hundred and eighty one on the importation thereof into Great Britain or Ireland; (that is to say,)

Tea, the pound - - Sixpence.

3. Foreign spirits bottled, in accordance with the regulations of the Commissioners of Customs or Inland Revenue, in any customs or excise warehouse in imperial or reputed quart or pint bottles, and packed in cases containing one or more dozen of such quart bottles or two or more dozen of such pint bottles, may be entered and cleared for home consumption; and there

Most Gracious Sovereign,

WE, Your Majesty's most dutiful and loyal subjects, the Commons of the United Kingdom of Great Britain and Ireland, in Parliament assembled, towards raising the necessary supplies to defray Your Majesty's public expenses, and making an addition to the public revenue, have freely and voluntarily resolved to give and grant unto Your Majesty the several duties herein-after mentioned, and do therefore most humbly beseech Your Majesty that it may be enacted; and be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

shall be charged upon the delivery for home consumption of such spirits so bottled, in addition to the duties of customs and any other charges thereon, the rate following; (that is to say.)

For every one dozen imperial or reputed quart bottles, or two dozen imperial or reputed pint bottles, of such spirits - Threepence.  
And such rate shall be deemed a duty of customs or excise according as the same is payable in respect of spirits delivered from a customs or excise warehouse.

## PART II.

### Taxes.

4. There shall be charged, collected, and paid for the year commencing on the sixth day of April one thousand eight hundred and eighty, in respect of all property, profits, and gains mentioned or described as chargeable in the Act of the sixteenth and seventeenth years of Her Majesty's reign, chapter thirty-four, the following duties of income tax; (that is to say.)

For every twenty shillings of the annual value or amount of property, profits, and gains chargeable under Schedules (A.), (C.), (D.), or (E.) of the said Act, the duty of fivepence;

And for every twenty shillings of the annual value of the occupation of lands, tenements, hereditaments, and heritages chargeable under Schedule (B.) of the said Act,—

In England, the duty of twopence halfpenny;

In Scotland and Ireland respectively, the duty of one penny three farthings.

5. All such provisions contained in any Act relating to income tax as are now in force shall have full force and effect with respect to the duties of income tax granted by this Act, so far as the same shall be consistent with the provisions of this Act; and for the purposes of this Act the year one thousand eight hundred and sixty-two mentioned in the forty-third section of the Act of the twenty-fifth and twenty-sixth years of Her Majesty's reign, chapter twenty-two, shall be read as and deemed to mean the year one thousand eight hundred and eighty.

6. In order to ensure the collection in due time of any duties of income tax which may be granted for the year commencing on the sixth day of April one thousand eight hundred and eighty-one, all such provisions contained in any Act relating to the duties of income tax as are in force on the fifth day of April one thousand eight hundred and eighty-one shall have full force

and effect with respect to the duties of income tax which may be so granted in the same manner as if the said duties had been actually granted, and the said provisions had been applied thereto, by an Act of Parliament passed on that day: Provided that nothing in this section shall be deemed to render necessary or authorise the appointment of assessors for such of the said duties as may be payable under Schedules (A.) and (B.) of the said Act of the sixteenth and seventeenth years of Her Majesty's reign, chapter thirty-four.

7. With respect to the assessment of the duties of income tax hereby granted under Schedules (A.) and (B.) in respect of property elsewhere than in the metropolis as defined by the Valuation (Metropolis) Act, 1869, and of the duties on inhabited houses elsewhere than in the said metropolis, for the year commencing, as respects England, on the sixth day of April, and as respects Scotland, on the twenty-fifth day of May, one thousand eight hundred and eighty, the following provisions shall have effect:

- (1.) The inspectors or surveyors of taxes shall be the assessors for the said duties, and in lieu of the poundage by law granted to be divided between the assessors and collectors in regard to such duties there shall be paid a poundage of three halfpence to the collectors thereof:
- (2.) The sum charged as the annual value of any property in the assessment of income tax thereon for the year which commenced on the sixth day of April one thousand eight hundred and seventy-nine, and the sum charged as the annual value of every inhabited house in the assessment made thereon for the same year as respects England, and as respects Scotland for the year which commenced on the twenty-fifth day of May one thousand eight hundred and seventy-nine, shall be taken as the annual value of such property or of such inhabited house for the assessment and charge thereon of the duties of income tax hereby granted, or of the duties on inhabited houses, to all intents and purposes as if such sum had been estimated to be the annual value in conformity with the provisions in that behalf contained in the Acts relating to income tax and the duties on inhabited houses respectively:
- (3.) The Commissioners executing the said Acts shall, for each place within their district, cause duplicates of the assessments to be made out and delivered to the collectors, together with the warrants for collecting the same.

8. Notwithstanding the provision contained in sub-section four of section eleven of the Industrial and Provident Societies Act, 1876, a society registered under that Act shall be chargeable to the duties of income tax under Schedule C. and Schedule D. in case the society sells to persons who are not members thereof, and the number of the shares of the society is limited either by its rules or practice.

### PART III.

#### *Stamps.*

9. On and after the first day of April one thousand eight hundred and eighty, in lieu of the stamp duties now payable upon probates of wills and letters of administration in England and Ireland, and upon inventories to be exhibited and recorded in any Commissary Court in Scotland, there shall be charged and paid the duties specified in the Schedule to this Act: Provided, that an additional inventory to be so exhibited or recorded of any effects of a deceased person, where a former duly stamped inventory of the estate and effects of the same person has been exhibited and recorded prior to the first day of April one thousand eight hundred and eighty, shall be chargeable with the amount of stamp duty with which it would have been chargeable if this Act had not been passed.

10.—(1.) Together with the affidavit to be required and received from the person applying for a probate or letters of administration in England, in conformity with section thirty-eight of the Act passed in the fifty-fifth year of the reign of King George the Third, chapter one hundred and eighty-four, there shall be delivered an account of the particulars of the personal estate for or in respect of which the probate or letters of administration is or are to be granted, and of the estimated value of such particulars.

(2.) The account so delivered shall be transmitted to the Commissioners of Inland Revenue, together with the documents mentioned in section ninety-three of the Act passed in the twentieth and twenty-first years of Her Majesty's reign, chapter seventy-seven.

(3.) A like account shall be annexed to the affidavit to be required and received from the person applying for a probate or letters of administration in Ireland, in conformity with section one hundred and seventeen of the Act passed in the fifty-sixth year of the reign of King George the Third, chapter fifty-six, and such account shall be in lieu of, and in substitution for, the account annexed to the form of affidavit set forth in Part III. of the Schedule to the said Act.

(4.) Every account to be delivered in pursuance of this section shall be in accordance with such form as may be prescribed by the Commissioners of Her Majesty's Treasury.

11. Where any legacy duty or succession duty shall be presumptively payable in respect of any interest in expectancy upon the determination of a life or other temporary interest in possession in a legacy, or residue, or in personal property comprised in a succession, and the duty (if any) payable upon the life or other temporary interest shall have been fully paid and satisfied, it shall be lawful for the Commissioners of Inland Revenue, in their discretion, upon the application of the executor or trustee or other person who would be accountable for the duty in respect of such interest in expectancy, if it were then in possession, to commute the duty presumptively payable for a certain sum to be presently paid.

For assessing the amount which shall be so payable the Commissioners shall cause a present value to be set upon the presumptive duty, regard being had to any contingencies affecting the liability to such duty, and the interest of money involved in the calculation being reckoned at the rate for the time being allowed by the Commissioners in respect of duties paid in advance under the Succession Duty Act, 1853.

Upon the receipt of the certain sum the Commissioners shall give a discharge for the duty accordingly.

12. When an executor, administrator, or trustee shall have given notice in writing to the Commissioners of Inland Revenue for any claim to legacy duty or succession duty in respect of any fund in his hands which he intends to distribute, and shall have delivered to the Commissioners all particulars which they may require in order to ascertain the existence and extent of any such claim, he shall be at liberty to distribute the fund amongst the parties entitled thereto, after satisfaction of any claims to duty made by the Commissioners, and shall be entitled to receive from them a certificate discharging him from his liability to any duty in respect of the fund.

Such certificate shall not in any way affect the liability of any person other than the person in whose favour it is expressed to be given.

13. Where it appears upon an examination of the account rendered to the Commissioners of Inland Revenue that the value of the whole of the personal estate of any person dying after the passing of this Act does not amount to the sum of one hundred pounds, no legacy duty shall be charged in respect thereof or of any portion thereof.

## SCHEDULE

Of STAMP DUTIES ON PROBATES and LETTERS of ADMINISTRATION in ENGLAND of IRELAND  
and on INVENTORIES in SCOTLAND.

Where the estate and effects for or in respect of which a Probate or Letters of Administration shall be granted, or whereof an Inventory shall be exhibited and recorded, exclusive of what the deceased shall have been possessed of or entitled to as a trustee for any other person and not beneficially, shall be :—

	£		£				Duty.
Above the value of	100	and under	200	-	-	-	2
Of the value of	200	"	300	-	-	-	4
"	300	"	400	-	-	-	6
"	400	"	500	-	-	-	9
"	500	"	600	-	-	-	11
"	600	"	800	-	-	-	15
"	800	"	1,000	-	-	-	22
"	1,000	"	1,500	-	-	-	30
"	1,500	"	2,000	-	-	-	40
"	2,000	"	3,000	-	-	-	62
"	3,000	"	4,000	-	-	-	88
"	4,000	"	5,000	-	-	-	113
"	5,000	"	6,000	-	-	-	140
"	6,000	"	7,000	-	-	-	165
"	7,000	"	8,000	-	-	-	190
"	8,000	"	9,000	-	-	-	215
"	9,000	"	10,000	-	-	-	240
"	10,000	"	12,000	-	-	-	275
"	12,000	"	14,000	-	-	-	325
"	14,000	"	16,000	-	-	-	375
"	16,000	"	18,000	-	-	-	425
"	18,000	"	20,000	-	-	-	475
"	20,000	"	25,000	-	-	-	565
"	25,000	"	30,000	-	-	-	690
"	30,000	"	35,000	-	-	-	815
"	35,000	"	40,000	-	-	-	940
"	40,000	"	45,000	-	-	-	1,065
"	45,000	"	50,000	-	-	-	1,190
"	50,000	"	60,000	-	-	-	1,375
"	60,000	"	70,000	-	-	-	1,625
"	70,000	"	80,000	-	-	-	1,875
"	80,000	"	90,000	-	-	-	2,125
"	90,000	"	100,000	-	-	-	2,375
"	100,000	"	120,000	-	-	-	2,750
"	120,000	"	140,000	-	-	-	3,250
"	140,000	"	160,000	-	-	-	3,750
"	160,000	"	180,000	-	-	-	4,250
"	180,000	"	200,000	-	-	-	4,750
"	200,000	"	250,000	-	-	-	5,625
"	250,000	"	300,000	-	-	-	6,875
"	300,000	"	350,000	-	-	-	8,125
"	350,000	"	400,000	-	-	-	9,375
"	400,000	"	500,000	-	-	-	11,250
"	500,000 and upwards.						
then in addition to the said duty of £11,250, for every full sum of £100,000 in excess of £500,000, and also for any fractional part of £100,000 so in excess - - - - -							2,500

## CHAP. 15.

*National Debt Act, 1880.*

## ABSTRACT OF THE ENACTMENTS.

1. *Short title.*
2. *Power to Treasury to borrow 6,000,000l. on terminable annuities.*
3. *Increase of five years of permanent annual charge of the National Debt to 28,800,000l.*

An Act to authorise the Commissioners of Her Majesty's Treasury to borrow a sum on the security of Terminable Annuities, and to increase the permanent Annual Charge of the National Debt.  
(24th March 1880.)

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. This Act may be cited as the National Debt Act, 1880.

2. The Commissioners of Her Majesty's Treasury may from time to time during the financial year ending on the thirty-first day of March one thousand eight hundred and eighty-one, borrow any sum or sums, not exceeding in the whole six million pounds, by the creation of terminable annuities for any term not exceeding five years from the thirty-first day of March one thousand eight hundred and eighty.

All money so borrowed shall be placed to the credit of the account of Her Majesty's Exchequer, and form part of the Consolidated Fund.

The annuities so created shall be payable at such times in each year as may be fixed by the Commissioners of Her Majesty's Treasury, and shall be charged on the Consolidated Fund of the United Kingdom and be paid out of the permanent annual charge for the National Debt.

The annuities shall be created by warrant of the said Commissioners to the Governor and Company of the Bank of England, directing them to inscribe in their books the amount of such annuities in the names directed by the warrant.

3. For the period of five financial years, commencing on the first day of April one thousand eight hundred and eighty, the permanent annual charge for the National Debt shall be twenty-eight million eight hundred thousand pounds, and during that period the Sinking Fund Act, 1875, shall be construed as if "twenty-eight million eight hundred thousand pounds" were substituted in the first section of that Act for "twenty-eight million pounds."

## CHAP. 16.

*Exchequer Bills and Bonds Act, 1880.*

## ABSTRACT OF THE ENACTMENTS.

1. *Treasury may raise 60,000l. by Exchequer Bonds, Exchequer Bills, or Treasury Bills.*
2. *Payment of interest and repayment of principal.*
3. *Money to be paid into Exchequer.*
4. *Extension of sect. 15 of 29 & 30 Vict. c. 25. as to forgery, &c., to bonds.*
5. *Short title.*

An Act to raise the sum of sixty thousand pounds by Exchequer Bonds, Exchequer Bills, or Treasury Bills, for the service of the year ending on the thirty-first day of March one thousand eight hundred and eighty.  
(24th March 1880.)

Most Gracious Sovereign,

WE, Your Majesty's most dutiful and loyal subjects, the Commons of the United Kingdom

of Great Britain and Ireland, in Parliament assembled, towards raising the supply which we have cheerfully granted to Your Majesty in this session of Parliament, have resolved to grant unto Your Majesty the sum herein-after mentioned; and do therefore most humbly beseech Your Majesty that it may be enacted; and be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. Towards raising the supply granted to Her Majesty for the service of the year ending on the thirty-first day of March one thousand eight hundred and eighty, it shall be lawful for the Commissioners of Her Majesty's Treasury, at any time or times not later than the said thirty-first day of March, to raise any sum or sums, not exceeding in the whole sixty thousand pounds, by the issue of Exchequer Bonds, Exchequer Bills, or Treasury Bills, in manner provided by the Exchequer Bills and Bonds Act, 1866, and the Treasury Bills Act, 1877, so, however, that no Exchequer Bond shall be made out for any sum less than one hundred pounds.

Every Exchequer Bond issued in pursuance of this Act shall provide for the paying off of such bond at par at any period not exceeding three years nor less than twelve months from the date of such bond.

2. The interest on all Exchequer Bonds issued in pursuance of this Act shall be charged upon

and issued out of the Consolidated Fund of the United Kingdom, or out of the growing produce thereof.

The principal money secured by every Exchequer Bond issued in pursuance of this Act shall be repaid out of moneys provided by Parliament for the purpose.

3. All money raised in pursuance of this Act shall be paid into the Exchequer.

4. Section fifteen of the Exchequer Bills and Bonds Act, 1866, (which section relates to the forgery of Exchequer Bills,) shall apply to all Exchequer Bonds issued in pursuance of this Act in like manner as if it were herein enacted with the substitution of Exchequer Bond for Exchequer Bill.

5. This Act may be cited as the Exchequer Bills and Bonds Act, 1880.

#### CHAP. 17.

#### *Town Councils and Local Boards Act, 1880.*

##### ABSTRACT OF THE ENACTMENTS.

1. *Alternative qualification for membership of local authority.*
2. *Short title.*
3. *Extent.*

An Act to abolish the property qualification for members of Municipal Corporations and Local Governing Bodies. (24th March 1880.)

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1.—(1.) Subject as in this section mentioned, every person shall be qualified to be elected and to be a member of a local authority who is at the time of election qualified to elect to any membership of that authority.

(2.) For the purposes of this section the term "local authority" means,—

(a.) The council of a borough under the Municipal Corporations Act, 1835, or any Act amending the same;

(b.) In Ireland, the town council of any town corporate, commissioners appointed by virtue of an Act made in the ninth year of King George the Fourth, intitled "An Act to make provision for

" the lighting, cleansing, and watching  
" of cities and towns corporate, and  
" market towns in Ireland in certain  
" cases," and any municipal town or  
township commissioners appointed  
under any general or local Act.

(3.) The qualifications mentioned in this section shall be alternatives for and shall not repeal or take away any other qualification.

(4.) Nothing in this section shall qualify any person for any office who is disqualified for the office by the existing law by reason of office, contract, bankruptcy, or any other matter of disqualification or disability.

(5.) If a person qualified under this section ceases for six months to reside within the borough or district in which he has been elected to an office, he shall cease to be qualified under this section and his office shall become vacant, unless he was at the time of his election and continues to be qualified in some other manner.

2. This Act may be cited as the Town Councils and Local Boards Act, 1880.

3. This Act shall extend to Ireland but not to Scotland.

## CHAP. 18.

*Parliamentary Elections and Corrupt Practices Act, 1880.*

## ABSTRACT OF THE ENACTMENTS.

1. *Short title.*
2. *Repeal of s. 36. of 30 & 31 Vict. c. 102. as to payment of expenses of conveyance of voters.*
3. *Amendment of law as to parliamentary elections in Scotland.*
4. *Continuance of Acts.*

## SCHEDULE.

An Act to amend the Law relating to the Conveyance of Voters to the Poll, and to continue the Acts relating to the Prevention of Corrupt Practices at Parliamentary Elections and the Acts relating to Election Petitions.

(24th March 1880.)

WHEREAS by section thirty-six of the Representation of the People Act, 1867, it is enacted that it shall not be lawful for any candidate or any one on his behalf at any election for a borough, except certain boroughs therein mentioned, to pay any money on account of the conveyance of any voter to the poll, either to the voter himself or to any other person, and that any such payment shall be deemed to be an illegal payment, and it is expedient to amend such enactment:

And whereas the Acts mentioned in the Schedule hereto expire on the thirty-first day of December one thousand eight hundred and eighty, and it is expedient to continue the same:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as the Parliamentary Elections and Corrupt Practices Act, 1880.

2. The thirty-sixth section of the Representation of the People Act, 1867, shall be repealed so far as concerns the conveyance of voters within any borough.

3. In all elections whatever of a member or members to serve in Parliament for any county,

division of a county, or for any city or burgh, or district of burghs, in Scotland, no inquiry shall be permitted at the time of polling as to the right of any person to vote, except only as follows; (that is to say,) that the presiding officer or clerk appointed by the returning officer to attend at a polling station shall, if required on behalf of any candidate, put to any voter at the time of his tendering his vote, and not afterwards, the following questions, or either of them:

1. Are you the same person whose name appears as *A.B.* on the register of voters now in force for the county of \_\_\_\_\_  
[or for the \_\_\_\_\_ division  
of the county of \_\_\_\_\_], or for  
the city [or burgh] of \_\_\_\_\_, or for  
the \_\_\_\_\_ district of burghs [as  
the case may be]?
2. Have you already voted, either here or elsewhere, at this election for the county of \_\_\_\_\_  
[or for  
the \_\_\_\_\_ division of the county  
of \_\_\_\_\_], or for the city [or  
burgh] of \_\_\_\_\_, or for the  
\_\_\_\_\_ district of burghs  
[as the case may be]?

And if any person shall wilfully make a false answer to either of the questions aforesaid, he shall be deemed guilty of a crime and offence within the meaning of the Ballot Act, 1872.

4. This Act and the Acts mentioned in the Schedule to this Act, so far as they are unrepealed, shall continue in force until the thirty-first day of December one thousand eight hundred and eighty-one, and any enactments amending or affecting the enactments continued by this Act shall, in so far as they are temporary in their duration, be continued in like manner.



## SCHEDULE.

## ACTS REFERRED TO.

Session and Chapter.	Title.
17 & 18 Vict. c. 102.	- The Corrupt Practices Prevention Act, 1854.
21 & 22 Vict. c. 87.	- An Act to continue and amend the Corrupt Practices Prevention Act, 1854.
26 & 27 Vict. c. 29.	- An Act to amend and continue the Law relating to Corrupt Practices at Elections of Members of Parliament.
31 & 32 Vict. c. 125.	- The Parliamentary Elections Act, 1868.
32 & 33 Vict. c. 21.	- The Corrupt Practices Commission Expenses Act, 1869.
34 & 35 Vict. c. 61.	- The Election Commissioners Expenses Act, 1871.
42 & 43 Vict. c. 75.	- The Parliamentary Elections and Corrupt Practices Act, 1879.

## CHAP. 19.

*Companies Act, 1880.*

## ABSTRACT OF THE ENACTMENTS.

1. *Short title.*
2. *Construction of Acts.*
3. *Accumulated profits may be returned to shareholders in reduction of paid-up capital.*
4. *No resolution to take effect till particulars have been registered.*
5. *Power to any shareholder within one month after passing of resolution to require Company to retain moneys paid upon shares held by such person.*
6. *Company to specify amounts which shareholders have required them to retain under s. 5.; also to specify amounts of profits returned to shareholders.*
7. *Power of Registrar to strike names of defunct Companies off register.*

An Act to amend the Companies Acts of 1862, 1867, 1877, and 1879.

(24th March 1880.)

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited for all purposes as the Companies Act, 1880.

2. This Act shall, so far as is consistent with the tenor thereof, be construed as one with the Companies Acts, 1862, 1867, 1877, and 1879, and the said Acts and this Act may be referred to as the Companies Acts, 1862 to 1880.

3. When any Company has accumulated a sum of undivided profits, which with the consent of the shareholders may be distributed among the shareholders in the form of a dividend or bonus, it shall be lawful for the Company, by special resolution, to return the same, or any part thereof, to the shareholders in reduction of the paid-up capital of the Company, the unpaid

capital being thereby increased by a similar amount. The powers vested in the directors of making calls upon the shareholders in respect of moneys unpaid upon their shares shall extend to the amount of the unpaid capital as augmented by such reduction.

4. No such special resolution as aforesaid shall take effect until a memorandum, showing the particulars required by law in the case of a reduction of capital by order of the court, shall have been produced to and registered by the Registrar of Joint Stock Companies.

5. Upon any reduction of paid-up capital made in pursuance of this Act, it shall be lawful for any shareholder, or for any one or more of several joint shareholders, within one month after the passing of the special resolution for such reduction, to require the Company to retain, and the Company shall retain accordingly, the whole of the moneys actually paid upon the shares held by such person, either alone or jointly with any other person or persons, and which, in consequence of such reduction, would otherwise be returned to him or them, and thereupon the

shares in respect of which the said moneys shall be so retained shall, in regard to the payment of dividends thereon, be deemed to be paid up to the same extent only as the shares on which payment as aforesaid has been accepted by the shareholders in reduction of their paid-up capital, and the Company shall invest and keep invested the moneys so retained in such securities authorised for investment by trustees as the Company shall determine, and upon the money so invested, or upon so much thereof as from time to time exceeds the amount of calls subsequently made upon the shares in respect of which such moneys shall have been retained, the Company shall pay such interest as shall be received by them from time to time on such securities, and the amount so retained and invested shall be held to represent the future calls which may be made to replace the capital so reduced on those shares, whether the amount obtained on sale of the whole or such proportion thereof as represents the amount of any call when made, produces more or less than the amount of such call.

6. From and after such reduction of capital the Company shall specify in the annual lists of members, to be made by them in pursuance of the twenty-sixth section of the Companies Act, 1862, the amounts which any of the shareholders of the Company shall have required the Company to retain, and the Company shall have retained accordingly, in pursuance of the fifth section of this Act, and the Company shall also specify in the statements of account laid before any general meeting of the Company the amount of the undivided profits of the Company which shall have been returned to the shareholders in reduction of the paid-up capital of the Company under this Act.

7.—(1.) Where the Registrar of Joint Stock Companies has reasonable cause to believe that a Company, whether registered before or after the passing of this Act, is not carrying on business or in operation, he shall send to the Company by post a letter inquiring whether the Company is carrying on business or in operation.

(2.) If the Registrar does not within one month of sending the letter receive any answer thereto, he shall within fourteen days after the expiration of the month send to the Company by post a registered letter referring to the first letter, and stating that no answer thereto has been received by the Registrar, and that if an answer is not received to the second letter within one month from the date thereof, a notice will be published in the Gazette with a view to striking the name of the Company off the register.

(3.) If the Registrar either receives an answer from the Company to the effect that it is not carrying on business or in operation, or does not within one month after sending the second letter

receive any answer thereto, the Registrar may publish in the Gazette and send to the Company a notice that at the expiration of three months from the date of that notice the name of the Company mentioned therein will, unless cause is shown to the contrary, be struck off the register and the Company will be dissolved.

(4.) At the expiration of the time mentioned in the notice the Registrar may, unless cause to the contrary is previously shown by such Company, strike the name of such Company off the register, and shall publish notice thereof in the Gazette, and on the publication in the Gazette of such last-mentioned notice the Company whose name is so struck off shall be dissolved: Provided that the liability (if any) of every director, managing officer, and member of the Company shall continue and may be enforced as if the Company had not been dissolved.

(5.) If any Company or member thereof feels aggrieved by the name of such Company having been struck off the register in pursuance of this section, the Company or member may apply to the superior court in which the Company is liable to be wound up; and such court, if satisfied that the Company was at the time of the striking off carrying on business or in operation, and that it is just so to do, may order the name of the Company to be restored to the register, and thereupon the Company shall be deemed to have continued in existence as if the name thereof had never been struck off; and the court may by the order give such directions and make such provisions as seem just for placing the Company and all other persons in the same position as nearly as may be as if the name of the Company had never been struck off.

(6.) A letter or notice authorised or required for the purposes of this section to be sent to a Company may be sent by post addressed to the Company at its registered office, or, if no office has been registered, addressed to the care of some director or officer of the Company, or if there be no director or officer of the Company whose name and address are known to the Registrar, the letter or notice (in identical form) may be sent to each of the persons who subscribed the memorandum of association, addressed to him at the address mentioned in that memorandum.

(7.) In the execution of his duties under this section the Registrar shall conform to any regulations which may be from time to time made by the Board of Trade.

(8.) In this section the Gazette means, as respects Companies whose registered office is in England, the London Gazette; as respects Companies whose registered office is in Scotland, the Edinburgh Gazette; and as respects Companies whose registered office is in Ireland, the Dublin Gazette.

# A T A B L E

OF

All the STATUTES passed in the Seventh Session of the Twenty-first Parliament of the United Kingdom of Great Britain and Ireland.

43 VICTORIA.—A.D. 1880.

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3. An Act to amend the Law relating to the Salaries and Allowances of certain Officers in India; and for other purposes relating thereto - - - - - 8
4. An Act to render valid certain proceedings taken for the Relief of Distress in Ireland, and to make further provision for such Relief; and for other purposes - - - - - 9
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TO THE

## PUBLIC GENERAL ACTS,

43 VICTORIA.—A.D. 1880.

NOTE.—The capital letters placed after the chapter have the following signification :—

E. <i>that the Act relates to</i>	England (and Wales, if it so extend).
S.       "       "	Scotland exclusively.
I.       "       "	Ireland exclusively.
E. & I.   "       "	England and Ireland.
E. & S.   "       "	England and Scotland.
U.K.     "       "	Great Britain and Ireland (and Colonies, if it so extend).
C.       "       "	The Colonies, or any of them.

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Companies; to amend the Com- panies Acts of 1862, 1867, 1877, and 1879 (25 & 26 Vict.			

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| East India Loan; to enable the Secretary of State in Council of India to raise money in the United Kingdom for the purpose of paying off or redeeming Debentures of the East Indian Railway Company - - | 10.   | U.K. |  | Joint Stock Companies. <i>See</i> Companies.  |
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| Exchequer Bills and Bonds; to raise the sum of 60,000 <i>l.</i> by Exchequer Bonds, Exchequer Bills, or Treasury Bills, for the service of the year ending the 31st day of March 1880 -                 | 16.   | U.K. |  | S.  |
|   |       |      |  | Legacy and Succession Duties. <i>See</i> Inland Revenue.  |
| Hypothec Abolition; to abolish the Landlord's Right of Hypothec for Rent in Scotland  | 12.   | S.   |  | Letters of Administration. <i>See</i> Inland Revenue.   |
|   |       |      |  | Licensing Acts Amendment; for amending the Law relating to the grant by Justices of Certificates for Beer Dealers Retail Licences - -   |
| Income Tax. <i>See</i> Inland Revenue.  |       |      |  | 6.  |
| India Stock; to make Powers of Attorney and Requests for Transmission of Dividend Warrants by Post relating to India Five per centum Stock applicable to India Four per centum Stock - -                | 11.   | U.K. |  | E.  |
| — <i>See also</i> East India Loan.  |       |      |  | Local Boards. <i>See</i> Municipal Corporations.  |
| Indian Salaries and Allowances; to amend the Law relating to the Salaries and Allowances of certain Officers in India; and for other purposes relating thereto - - -                                    | 3.    | U.K. |  | Municipal Corporations; to abolish the property qualification for members of Municipal Corporations and Local Governing Bodies - -  |
| Inhabited House Duties. <i>See</i> Inland Revenue.  |       |      |  | 17.   |
| Inland Revenue; to grant certain Duties of Customs and Inland Revenue, to alter other Duties, and to amend the Laws relating to Inland  |       |      |  | E. & I.   |
|   |       |      |  | Mutiny Acts. <i>See</i> Army Discipline, &c.  |
|   |       |      |  | National Debt; to authorise the Commissioners of Her Majesty's Treasury to borrow a sum on the Security of Terminable Annuities, and to increase the permanent Annual Charge of the National Debt -   |
|   |       |      |  | 15.   |
|   |       |      |  | U.K.  |
|   |       |      |  | Parliamentary Elections; to amend the Law relating to the Conveyance of Voters to the Poll, and to continue the Acts relating to the Prevention of Corrupt Practices at Parliamentary Elections and the Acts relating to Election Petitions - - - |
|   |       |      |  | 18.   |
|   |       |      |  | U.K.  |

	Chap.		Chap.
Powers of Attorney. <i>See</i> India Stock.		Dwellings. Hypothec Abolition. Road Debts on Entailed Estates.	
Probate Duty. <i>See</i> Inland Revenue.		Seed Supply; to enable Guardians of the Poor to borrow Money for the purpose of procuring Seed Potatoes and Seed Oats, and other Seed, for Tenants in Ireland; and for other purposes	1. I.
Property Qualification Abolition. <i>See</i> Municipal Corporations.		Sinking Fund. <i>See</i> National Debt.	
Relief of Distress in Ireland; to render valid certain proceedings taken for the Relief of Distress in Ireland, and to make further provision for such Relief; and for other purposes	4. I.	Spirits, Foreign. <i>See</i> Customs and Inland Revenue.	
— to enable Guardians of the Poor to borrow Money for the purpose of procuring Seed Potatoes and Seed Oats, and other Seed, for Tenants in Ireland; and for other purposes	1. I.	Supply. <i>See</i> Consolidated Fund. Exchequer Bills and Bonds.	
Road Debts on Entailed Estates; to amend the Law in regard to charging Road Debts on Entailed Estates in Scotland	7. S.	Tea Duties. <i>See</i> Customs and Inland Revenue.	
Salaries (Indian). <i>See</i> Indian Salaries and Allowances.		Terminable Annuities. <i>See</i> National Debt.	
Scotland, Acts relating exclusively to. <i>See</i> Artizans and Labourers		Town Councils and Local Boards; to abolish the property qualification for members of Municipal Corporations and Local Governing Bodies	17. E. & I.
		Treasury Bills. <i>See</i> Exchequer Bills and Bonds.	
		Voters, Conveyance of. <i>See</i> Parliamentary Elections.	

## T A B L E S

SHOWING

### THE EFFECT OF THE SESSION'S LEGISLATION.

TABLE A.—Acts of 43 Vict. (in order of Chapter), showing their effect on former Acts.

TABLE B.—Acts of former Sessions (in Chronological Order) Repealed and Amended by Acts of 43 Vict.

(A.)

Acts of 43 Vict. (in order of Chapter), showing their effect on former Acts.

Ch.		Ch.	
1.	<i>Seed Supply (Ireland)</i> [I.] Empowers Guardians of the Poor to borrow money for purposes of the Act. Applies Petty Sessions (Ireland) Acts, 14 & 15 Vict. c. 93. and 22 Vict. c. 14.	2.	<i>Artizans and Labourers Dwellings Improvement (Scotland)</i> —cont. Applies (as to Nuisances) 30 & 31 Vict. c. 101., Public Health (Scotland) Act, 1867.
2.	<i>Artizans and Labourers Dwellings Improvement (Scotland)</i> [S.] Amends 38 & 39 Vict. c. 49., Artizans and Labourers Dwellings Improvement (Scotland) Act, 1875.	3.	<i>Indian Salaries and Allowances</i> [U.K.] Repeals s. 89. in part of 53 Geo. 3. c. 155. } Repeals s. 76. in part of 3 & 4 Will. 4. c. 85. } <i>East India Company's Charter.</i> Repeals s. 3. in part of 4 Geo. 4. c. 71., Retiring Pay, Pensions, &c. (India).

Table A.—Acts of 43 Vict. (in order of Chapter), &amp;c.—continued.

- | Ch.   | Ch.  |
|---|--|
| <p>4. <i>Relief of Distress (Ireland)</i> [I.]<br/>Empowers Guardians of the Poor to borrow money for purposes of the Act. Applies 1 &amp; 2 Vict. c. 56. (Poor Law), and Acts amending same.<br/>Applies 10 &amp; 11 Vict. c. 32. (Land Improvement), and Acts amending same.<br/>Applies 41 &amp; 42 Vict. c. 52. and 42 &amp; 43 Vict. c. 57., Public Health (Ireland) Acts, 1878 and 1879.<br/>Applies 33 &amp; 34 Vict. c. 46., Landlord and Tenant (Ireland) Act, 1870.<br/>Extends Borrowing Powers of Commissioners under 32 &amp; 33 Vict. c. 42., Irish Church Act, 1869.</p> <p>5. <i>Consolidated Fund</i> (3,982,902<i>l.</i> 3<i>s.</i> 3<i>d.</i> and 16,641,300<i>l.</i>) [U.K.]</p> <p>6. <i>Beer Dealers Retail Licences</i> [E.]<br/>Repeals s. 8. of 32 &amp; 33 Vict. c. 27., Wine and Beerhouse Act, 1869.<br/>Repeals s. 31. of 37 &amp; 38 Vict. c. 49., Licensing Act, 1874.<br/>Amends 26 &amp; 27 Vict. c. 33., Inland Revenue Duties.<br/>Applies 35 &amp; 36 Vict. c. 94., Licensing Act, 1872.</p> <p>7. <i>Road Debts on Entailed Estates (Scotland)</i> [S.]<br/>Amends s. 70. of 41 &amp; 42 Vict. c. 51., Roads and Bridges (Scotland) Act, 1878.</p> <p>8. <i>Artizans Dwellings Act</i> (1868) <i>Amendment</i> [U.K.]<br/>Amends s. 22. of 42 &amp; 43 Vict. c. 64., Artizans and Labourers Dwellings Act, 1868, Amendment Act, 1879.</p> <p>9. <i>Army Discipline and Regulation (Annual)</i> [U.K.]<br/>Continues 42 &amp; 43 Vict. c. 33., Army Discipline and Regulation Act, 1879.</p> <p>10. <i>East India Loan (East Indian Railway Debentures)</i> [U.K.]<br/>Recites 42 &amp; 43 Vict. c. cccv., East Indian Railway Company Purchase Act, 1879; and empowers Secretary of State in Council of India to raise 2,950,000<i>l.</i> for purposes of Act.<br/>Applies 5 &amp; 6 Will. 4. c. 64., as to Composition for Stamp Duties.<br/>Applies 22 &amp; 23 Vict. c. 35., as to East India Stock.<br/>Applies 26 &amp; 27 Vict. c. 73., as to India Stock.<br/>Applies 33 &amp; 34 Vict. c. 93., Married Women's Property Act, 1870.<br/>Applies 34 &amp; 35 Vict. c. 29., East India Stock (Dividends) Act, 1871.</p> | <p>11. <i>India Stock (Powers of Attorney)</i> [U.K.]<br/>Applies 34 &amp; 35 Vict. c. 29., as to Transmission by Post of Powers of Attorney and Dividend Warrants.</p> <p>12. <i>Hypothec Abolition (Scotland)</i> [S.]<br/>Determines Landlord's Right of Hypothec after 11th Nov. 1881.</p> <p>13. <i>Consolidated Fund (Appropriation)</i> [U.K.]<br/>Authorises Issue of 9,552,927<i>l.</i> 9<i>s.</i> 10<i>d.</i> out of Consolidated Fund, and appropriation of the same.</p> <p>14. <i>Customs and Inland Revenue</i> [U.K.]<br/>Customs :—<br/>Continues Duties on Tea.<br/>Provisions as to Foreign Spirits bottled.<br/>Taxes :—<br/>Grants Duties of Income Tax, and applies provisions of former Acts.<br/>Provisions as to assessment of Income Tax and of Inhabited House Duties.<br/>Amends s. 11. of 39 &amp; 40 Vict. c. 45., Industrial and Provident Societies Act, 1876, as to Income Tax.<br/>Stamps :—<br/>Grants Duties on Probates and Letters of Administration.<br/>Applies and amends 55 Geo. 3. c. 184., 55 Geo. 3. c. 56., and 20 &amp; 21 Vict. c. 77.<br/>Empowers commutation (in certain cases) of Legacy or Succession Duty, and applies 16 &amp; 17 Vict. c. 51.<br/>Provision for relief from Legacy Duty where personal estate is less than 100<i>l.</i></p> <p>15. <i>National Debt</i> [U.K.]<br/>Amends 38 &amp; 39 Vict. c. 45., Sinking Fund Act, 1875.</p> <p>16. <i>Exchequer Bills and Bonds</i> [U.K.]<br/>Applies 29 &amp; 30 Vict. c. 25., Exchequer Bills and Bonds Act, 1866.<br/>Applies 40 &amp; 41 Vict. c. 2., Treasury Bills Act, 1877.</p> <p>17. <i>Town Councils and Local Boards</i> [E. &amp; I.]<br/>Abolishes Property Qualification.<br/>Applies 5 &amp; 6 Will. 4. c. 76., Municipal Corporations Act, 1835.<br/>Applies 9 Geo. 4. c. 82., Lighting, &amp;c. of Cities and Towns (Ireland).</p> <p>18. <i>Parliamentary Elections and Corrupt Practices</i> [U.K.]<br/>Repeals s. 36. of 30 &amp; 31 Vict. c. 102., as to Conveyance of Voters.<br/>Applies 35 &amp; 36 Vict. c. 33., Ballot Act, 1872.</p> |

Table A.—Acts of 43 Vict. (in order of Chapter), &c.—*continued*.

Ch.		Ch.	
18.	<i>Parliamentary Elections and Corrupt Practices</i> —cont.	18.	<i>Parliamentary Elections and Corrupt Practices</i> —cont.
	Continues the following Acts; viz.—		42 & 43 Vict. c. 75., <i>Parliamentary Elections and Corrupt Practices Act</i> , 1879.
	17 & 18 Vict. c. 102., { <i>Corrupt Practices Prevention Acts</i> , 21 & 22 Vict. c. 87., { 1854, 1858, 26 & 27 Vict. c. 29., { 1863.	19.	<i>Companies</i> [U.K.]
	31 & 32 Vict. c. 125., <i>Parliamentary Elections Act</i> , 1868.		Amends and applies 25 & 26 Vict. c. 89.,
	32 & 33 Vict. c. 21., <i>Corrupt Practices Commission Expenses Act</i> , 1869.		Amends and applies 30 & 31 Vict. c. 131.,
	34 & 35 Vict. c. 61., <i>Election Commissioners Expenses Act</i> , 1871.		Amends and applies 40 & 41 Vict. c. 26.,
			Amends and applies 42 & 43 Vict. c. 76.,
			<i>Companies Acts</i> , 1862, 1867, 1877, and 1879.

## (B.)

Acts of former Sessions (in Chronological Order) Repealed and Amended by Acts of 43 Vict.

Act repealed or amended.	Subject-matter.	How affected.	Chapter of 43 Vict.
53 Geo. 3. c. 155. s. 89. in part	East India Company - - -	Repealed -	3
55 Geo. 3. c. 56. - -	Probate, &c. Duties - - -	Amended -	14
" c. 184. - - -	Probate, &c. Duties - - -	Amended -	14
4 Geo. 4. c. 71. s. 3. in part	Retiring Pay, &c. (India) - - -	Repealed -	3
3 & 4 W. 4. c. 85. s. 76. in part	East India Company - - -	Repealed -	3
20 & 21 Vict. c. 77. - -	Probate, &c. Duties - - -	Amended -	14
25 & 26 Vict. c. 89. - -	Companies - - -	Amended -	19
26 & 27 Vict. c. 33. - -	Beer Dealers Licences - - -	Amended -	6
30 & 31 Vict. c. 102. s. 36.	Parliamentary Elections - - -	Repealed -	18
" c. 131. - - -	Companies - - -	Amended -	19
32 & 33 Vict. c. 27. s. 8. -	Beer Dealers Licences - - -	Repealed -	6
37 & 38 Vict. c. 49. s. 31. -	Beer Dealers Licences - - -	Repealed -	6
38 & 39 Vict. c. 45. - -	Sinking Fund - - -	Amended -	15
" c. 49. - - -	Artizans, &c. Dwellings (Scotland) -	Amended -	2
39 & 40 Vict. c. 45. - -	Income Tax—Industrial and Provident Societies.	Amended -	14
40 & 41 Vict. c. 26. - -	Companies - - -	Amended -	19
41 & 42 Vict. c. 51. - -	Roads and Bridges (Scotland) -	Amended -	7
42 & 43 Vict. c. 64. - -	Artizans, &c. Dwellings - - -	Amended -	8
" c. 76. - - -	Companies - - -	Amended -	19

# THE PUBLIC GENERAL ACTS

OF THE UNITED KINGDOM OF

**GREAT BRITAIN AND IRELAND:**

PASSED IN THE

**FORTY-THIRD AND FORTY-FOURTH YEARS**

OF THE REIGN OF HER MAJESTY

## QUEEN VICTORIA

At the Parliament begun and holden at Westminster, the 29th Day of April, *Anno Domini* 1880, in the Forty-third Year of the Reign of our Sovereign Lady VICTORIA, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith:  
Being the FIRST SESSION of the TWENTY-SECOND PARLIAMENT of the United Kingdom of GREAT BRITAIN and IRELAND.

LONDON :

PRINTED BY GEORGE EDWARD EYRE AND WILLIAM SPOTTISWOODE,  
PRINTERS TO THE QUEEN'S MOST EXCELLENT MAJESTY.

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MDCCCLXXX.



43 & 44 VICTORIA, 1880.

CHAP. 1.

*Public Works Loans Act, 1880.*

ABSTRACT OF THE ENACTMENTS.

1. *Short title.*

PART I.

*Appointment of Commissioners and Remission of Loans.*

2. *Appointment of Public Works Loan Commissioners for five years.*
3. *Remission of interest on loan to Anstruther Union Harbour Commissioners.*
4. *Remission of certain instalments of principal and interest due in respect of River Corrib mill power.*

PART II.

*Provision of Money for Public Works Loan Commissioners.*

5. *Grant of 5,000,000*l.* for Public Works loans during the period ending 30th June 1881.*

PART III.

*Grant of Money for Public Works Commissioners, Ireland.*

6. *Grant of 1,100,000*l.* for loan by Commissioners of Public Works in Ireland during the period ending 30th June 1881.*

SCHEDULE.

An Act to appoint Public Works Loan Commissioners; to grant Money for the purpose of Loans by the Public Works Loan Commissioners and the Commissioners of Public Works in Ireland; and for other purposes relating to Loans by those Commissioners.  
(14th June 1880.)

WHEREAS the persons appointed Public Works Loan Commissioners by the Public Works Loans  
VOL. LIX.—LAW JOUR. STAT.

Act, 1875, were appointed to hold office for a period of five years from the first day of April one thousand eight hundred and seventy-six, and it is expedient to appoint Commissioners for a further period of five years:

And whereas it is expedient to authorise the remission of certain sums due in respect of loans granted by the said Commissioners and by the Commissioners of Public Works in Ireland:

And whereas it is expedient to grant money for the purpose of loans by the Public Works Loan Commissioners and the Commissioners of Public Works in Ireland:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. This Act may be cited as the Public Works Loan Act, 1880.

#### PART I.

##### *Appointment of Commissioners and Remission of Loans.*

2. The following persons, that is to say, Thomas M. Weguelin, Esq., Thomson Hankey, Esq., T. N. Hunt, Esq., H. H. Vivian, Esq., M.P., W. Jones Loyd, Esq., Herbert Barnard, Esq., Lord Napier and Ettrick, Richard Musgrave Harvey, Esq., Lord Cottesloe, Sir Charles H. Mills, Bart., M.P., Jervoise Smith, Esq., Edward Howley Palmer, Esq., Right Honourable T. M. Gibson, Thomas Salt, Esq., Benjamin Buck Greene, Esq., and Charles Loyd Norman, Esq., shall after the passing of this Act be Public Works Loan Commissioners under the Public Works Loans Act, 1875, and shall hold office for a period of five years from the first day of April one thousand eight hundred and eighty-one.

3. Whereas by the Anstruther Union Harbour Act, 1860, the Commissioners of Anstruther Union Harbour, in this section referred to as the Harbour Commissioners, were incorporated, and the old harbour of Anstruther Easter therein mentioned, and the rates and dues thereof, were vested in them ;

And whereas the new harbour in the said Act mentioned has, in pursuance of that Act, been made and become vested in the Harbour Commissioners ;

And whereas the Public Works Loan Commissioners have, in pursuance of the said Act, advanced to the Harbour Commissioners the sum of sixteen thousand five hundred pounds, on security of the old and new harbours and the property connected therewith, and the rates and tolls thereof repayable by thirty annual instalments payable on the eighteenth day of October in each year, and the interest is payable annually on the same day ;

And whereas the Commissioners for the British White Herring Fisheries have in pursuance of the said Act advanced to the Harbour Commissioners the sum of six thousand five hundred pounds, but the principal and interest thereof are postponed to the security granted to the Public Works Loan Commissioners in respect of the said loan of sixteen thousand five hundred pounds ;

And whereas the revenues arising from the said old and new harbours are directed by the said Act to be applied, first, in payment of fifty pounds

a year to the magistrates and council of Anstruther Easter ; secondly, in payment of the interest and instalments of the principal of the loan granted by the Public Works Loan Commissioners ; and, thirdly, in payment of the ordinary expenditure on management, maintenance, and repairs of the said harbours and the works connected therewith, and in payment of other charges ;

And whereas all interest up to the eighteenth day of October one thousand eight hundred and seventy-one was paid, but since that date only a portion of one year's interest has been paid, and no instalment of principal has been paid ;

And whereas the Harbour Commissioners represented to the Commissioners of Her Majesty's Treasury that the revenues derived from the harbour are not sufficient to do more than meet the annual sum payable to the magistrates and council of Anstruther Easter, and the ordinary expenditure of the management, maintenance, and repairs of the said harbours, and that there is no immediate prospect of an increase of the revenues of the harbours sufficient to meet in addition to the above the interest on and instalments of principal of the loan by the Public Works Loan Commissioners ;

And whereas it is expedient to authorise the Public Works Loan Commissioners for a limited period to remit the payment of the interest on the said loan and suspend the payment of instalments of the principal of the said loan : Be it therefore enacted as follows :

The Public Works Loan Commissioners, with the approval of the Commissioners of Her Majesty's Treasury, may remit all or any part of the interest which has become due or may before the nineteenth day of October one thousand eight hundred and ninety-two become due in respect of the loan of sixteen thousand five hundred pounds advanced to the Harbour Commissioners by the Public Works Loan Commissioners, and may until that day suspend the payment of instalments of the principal of the said loan, but after the said day the principal and interest of the loan shall be payable to the Public Works Loan Commissioners as if the loan had been made on the day previous to that day.

All interest so remitted shall be deemed to be a free grant by Parliament.

4. Whereas under an Act of the session holden in the fifth and sixth years of the reign of Her present Majesty, chapter eighty-nine, intitled "An Act to promote the Drainage of Lands, and "improvement of Navigation and Water Power "in connexion with such Drainage, in Ireland," and the Acts amending the same, the Commissioners of Public Works in Ireland executed works for the improvement of the water power of certain mills situate on each side of the River

Corrib, in the county of Galway, and made their final award, dated the fourth day of April one thousand eight hundred and sixty, specifying, among other things, the works so executed and the mills and lands chargeable with the moneys expended on the said works;

And whereas by virtue of the said award, the said mills and lands became charged in the proportions specified in the said award with the repayment to the Commissioners of Public Works in Ireland of a portion of the moneys expended on the said works, the residue having been remitted by authority of the Commissioners of Her Majesty's Treasury;

And whereas out of the said moneys some instalments of principal and interest due from the proprietors of certain of the said mills and lands, amounting to fifteen hundred and sixty-six pounds fourteen shillings and tenpence, still remain due, as set forth in the Schedule to this Act, but the residue of the said moneys and all interest thereon have been paid;

And whereas the proprietors from whom the said instalments are so due complained that, having regard to the benefits conferred by the works, the amount charged on their mills and lands was excessive, and requested the Commissioners of Her Majesty's Treasury to authorise the remission of the said instalments;

And whereas it is expedient to authorise such remission: Be it therefore enacted that—

The Commissioners of Public Works in Ireland, with the approval of the Commissioners of Her Majesty's Treasury, may remit the instalments of principal and interest amounting to the sum of fifteen hundred and sixty-six pounds fourteen shillings and tenpence, which have become due in respect of the expenditure on the said works, and the sums so remitted shall be deemed to be a free grant by Parliament.

## PART II.

### *Provision of Money for Public Works Loan Commissioners.*

5. For the purpose of loans by the Public Works Loan Commissioners,—

- (1.) Any sum or sums, not exceeding in the whole the sum of five million pounds, may be issued out of the Consolidated Fund of the United Kingdom, or the growing produce thereof, in manner provided by the Public Works Loans

Act, 1875, as amended by the Public Works Loans Act, 1879; and

- (2.) The Commissioners for the Reduction of the National Debt may advance any part or parts of the total sum above in this section mentioned in reduction of the amount which may be so issued out of the Consolidated Fund;

and such sums may be issued and advanced during the period ending on the thirtieth day of June one thousand eight hundred and eighty-one, or on any earlier day at which a further Act granting money for the purpose of the said loans comes into operation.

The Treasury may, in the manner and subject to the limitations provided by the Public Works Loans Act, 1875, borrow the sum authorised by this section to be issued out of the Consolidated Fund, or any part of that sum.

## PART III.

### *Grant of Money for Public Works Commissioners, Ireland.*

6. For the purpose of loans by the Commissioners of Public Works in Ireland,—

- (1.) Any sum or sums, not exceeding in the whole one million one hundred thousand pounds, may be issued out of the Consolidated Fund of the United Kingdom, or the growing produce thereof, in manner provided by Part Two of the Public Works Loans (Ireland) Act, 1877, as amended by the Public Works Loans Act, 1879; and
- (2.) The Commissioners for the Reduction of the National Debt may advance any part or parts of the total sum above in this section mentioned in reduction of the amount which may be so issued out of the Consolidated Fund;

and such sums may be issued and advanced during the period ending on the thirtieth day of June one thousand eight hundred and eighty-one, or on any earlier day on which a further Act authorising the issue of money for those loans comes into operation.

The Treasury may, in the manner and subject to the limitations provided by Part Two of the Public Works Loans (Ireland) Act, 1877, borrow the sum authorised by this section to be issued out of the Consolidated Fund, or any part of that sum.



## SCHEDULE.

PROPRIETORS from whom INSTALMENTS of PRINCIPAL and INTEREST still remain due, referred to in Section 4.

Lots.	Proprietor.	Amount.
3	W. L. Franklin - - - - -	£ s. d. 59 12 10
7, 8, 11, 12, 13, & 14.	Miss Marcella Burke - - - - -	152 6 3
15	Michael Cloran - - - - -	39 16 9
16	Henry Persse - - - - -	26 0 6
17 & 19	Rush and Palmer - - - - -	43 3 3
20, 21, 22, & 23.	Rev'd. A. N. C. McLachlan - - - - -	55 13 0
28, 29, & 30	Reps. of Sir B. L. Guinness - - - - -	18 12 3
9 & 10	Commissioners of Public Works, in trust - - - - -	1,171 10 0
		£ 1,566 14 10

## CHAP. 2.

*Glebe Loan (Ireland) Acts Amendment Act, 1880.*

## ABSTRACT OF THE ENACTMENTS.

1. *Short title.*
2. *Section 2 of 41 & 42 Vict. c. 6. repealed.*

An Act to amend the Glebe Loan Acts  
(Ireland). (29th June 1880.)

WHEREAS by section two of the Glebe Loan (Ireland) Amendment Act, 1878, it is provided that no loan under the provisions of the Glebe Loan (Ireland) Acts shall be made after the thirty-first day of August one thousand eight hundred and eighty, and it is expedient that the said section should be amended, and that the time during which loans under the said Acts may be made should be extended for a further period:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and

Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited for all purposes as the Glebe Loan (Ireland) Acts Amendment Act, 1880, and this Act and the Glebe Loan (Ireland) Acts 1870 to 1878, may be cited together as the Glebe Loan (Ireland) Acts.

2. The second section of the Glebe Loan (Ireland) Amendment Act, 1878, which limits to the thirty-first day of August one thousand eight hundred and eighty the period during which loans may be made under the Glebe Loan (Ireland) Acts, is hereby repealed, and loans may be made under the said Acts until but not after the thirty-first day of August one thousand eight hundred and eighty-three.

## CHAP. 3.

*Consolidated Fund (No. 1) Act, 1880 (Session 2).*

## ABSTRACT OF THE ENACTMENTS.

1. *Issue of 4,925,320l. out of the Consolidated Fund for the service of the year ending 31st March 1881.*
2. *Power to the Treasury to borrow.*
3. *Short title.*

An Act to apply the sum of Four million nine hundred and twenty-five thousand three hundred and twenty pounds out of the Consolidated Fund to the service of the year ending on the thirty-first day of March one thousand eight hundred and eighty-one.

(29th June 1880.)

Most Gracious Sovereign,

WE, Your Majesty's most dutiful and loyal subjects, the Commons of the United Kingdom of Great Britain and Ireland, in Parliament assembled, towards making good the supply which we have cheerfully granted to Your Majesty in this session of Parliament, have resolved to grant unto Your Majesty the sum herein-after mentioned; and do therefore most humbly beseech Your Majesty that it may be enacted; and be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. The Commissioners of Her Majesty's Treasury for the time being may issue out of the

Consolidated Fund of the United Kingdom of Great Britain and Ireland, and apply towards making good the supply granted to Her Majesty for the service of the year ending on the thirty-first day of March one thousand eight hundred and eighty-one the sum of four million nine hundred and twenty-five thousand three hundred and twenty pounds.

2. The Commissioners of the Treasury may borrow from time to time on the credit of the said sum, any sum or sums not exceeding in the whole the sum of four million nine hundred and twenty-five thousand three hundred and twenty pounds, and shall repay the moneys so borrowed with interest not exceeding five pounds per centum per annum out of the growing produce of the Consolidated Fund at any period not later than the next succeeding quarter to that in which the said moneys were borrowed.

Any sums so borrowed shall be placed to the credit of the account of Her Majesty's Exchequer, and shall form part of the said Consolidated Fund, and be available in any manner in which such fund is available.

3. This Act may be cited as the Consolidated Fund (No. 1) Act, 1880 (Session 2).

## CHAP. 4.

*Judicial Factors (Scotland) Act, 1880.*

## ABSTRACT OF THE ENACTMENTS.

1. *Short title.*
2. *Commencement of Act.*
3. *Interpretation of terms.*
4. *Sheriff empowered to appoint Judicial Factors in small estates.*
5. *Power to pass acts of sederunt.*
6. *Fees payable by estates deriving benefit from Act.*

An Act to provide for the appointment of Judicial Factors in Sheriff Courts in Scotland. (9th July 1880.)

WHEREAS an Act was passed in the session of the twelfth and thirteenth years of the reign of Her present Majesty, chapter fifty-one, intituled "An Act for the better protection of the property of pupils, absent persons, and persons under mental incapacity in Scotland:"

And whereas it is expedient that sheriffs in Scotland should be empowered to appoint Judicial Factors in cases of estates of small value:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited for all purposes as the Judicial Factors (Scotland) Act, 1880.

2. This Act shall commence to have effect on the first day of January one thousand eight hundred and eighty-one, which day is hereinafter referred to as the commencement of this Act.

3. In this Act the following words and expressions shall have the meanings herein-after assigned to them, unless there be something in the subject or context repugnant to such construction; that is to say,

The expression "Judicial Factor" shall mean factor loco tutoris and curator bonis:

The expressions "Accountant of the Court of Session" or "Accountant," shall mean the Accountant of the Court of Session appointed under the recited Act:

The expression "prescribed" means prescribed by the regulations which the Court of Session are by this Act authorised to make from time to time by act of sederunt:

The expression "Lord Ordinary" shall mean the Lord Ordinary in the Court of Session discharging the duties of Junior Lord Ordinary in time of session, and the Lord Ordinary on the Bills in the time of vacation:

"Estate" shall include all property and funds, and all rights heritable and moveable.

4. From and after the commencement of this Act it shall be competent for sheriffs in the several sheriff courts in Scotland, or for their substitutes, and they are hereby authorised and empowered, to appoint Judicial Factors in cases of estates the yearly value of which (heritable and moveable estate being taken together) does not exceed one hundred pounds, and every sheriff and sheriff substitute respectively shall

have and may exercise over and with regard to Judicial Factors appointed in the sheriff court the same powers and authorities that under the recited Act either division of the Court of Session or the Lord Ordinary respectively have and may exercise under the recited Act over and with regard to Judicial Factors appointed in the Court of Session; and for the purposes of this enactment the following provisions shall have effect; that is to say,

1. Until otherwise prescribed, proceedings for appointment of Judicial Factors in the sheriff court shall commence by petition to be presented to the sheriff or sheriff substitute of the county in which the pupil or insane person is resident, as nearly as may be in the form in use in ordinary actions in that court, and shall thereafter be conducted therein as nearly as may be in the same form and manner in which proceedings under the recited Act are conducted before the Lord Ordinary:

2. In estimating the yearly value of the estate the yearly value of any lands and heritages shall be taken to be the yearly rent or value of the same as entered in the valuation roll for the county or burgh in which the same are situated in force for the time under the provisions of the Act of the session of the seventeenth and eighteenth years of the reign of Her present Majesty, chapter ninety-one, and the Acts amending the same, and the yearly value of any moveable estate shall be taken to be the amount of the yearly interest on the estimated value of the same at four pounds per centum per annum; and the yearly value of any estate, or any portion thereof, which cannot be ascertained in either of the foregoing manners shall be ascertained in such manner as the sheriff or sheriff substitute shall think fit:

3. Before appointing a Judicial Factor on any estate under the provisions of this Act the sheriff or sheriff substitute shall be satisfied, by reasonable evidence adduced before him, that the yearly value of such estate (heritable and moveable estate being taken together) does not exceed one hundred pounds; and in making any such appointment he shall make a finding in his interlocutor to that effect, which shall be final; and no such appointment once made shall fall in respect of it afterwards appearing that such yearly value did exceed one hundred pounds:

4. Subject to such rules as may from time to time be made by act of sederunt as hereinafter provided, the whole provisions of the

recited Act, and any Acts amending the same, and any acts of sederunt made in terms thereof applicable to Judicial Factors appointed in the Court of Session shall apply as nearly as may be to Judicial Factors appointed in the sheriff court :

5. In all cases of any appeal or reclaiming note being competent from a determination of the Lord Ordinary in the Court of Session to a division of the Inner House of that court an appeal shall be competent in the like cases from a determination by a sheriff substitute to the sheriff, and in all cases of the accountant of the Court of Session being bound to make any report to the Lord Ordinary in the Court of Session he shall be bound in the like case to make his report to a sheriff or sheriff substitute.
6. Until otherwise prescribed, proceedings in the fixing of caution, in applying for special powers, in the auditing of accounts, in the exoneration and discharge or removal of Judicial Factors, and all other proceedings necessary for the management of the estates dealt with under this Act, shall be taken in the sheriff court in as nearly as may be the same form and manner in which the like proceedings are taken before the Lord Ordinary :
7. It shall be the duty of the accountant, when it appears to him that there is a diversity of judgment or practice in proceedings in Judicial Factories in the sheriff courts which it would be important to put an end to, to report the same to the first division of the Court of Session, specifying the proceedings in which such diversity appeared, and asking for a rule to be laid down to secure uniformity of judgment or practice in such proceedings, and the Court shall consider such report, and if they shall see fit shall lay down such a rule accordingly, which rule the several sheriffs and their substitutes shall be bound to observe :

8. Decrees in absence shall not be opened up after the elapse of twelve months :

9. It shall be competent for the sheriff or for the Court of Session, upon the application of any person interested, to recall any appointment made under this Act :

10. The decision of the sheriff in all cases under this Act shall be final, and the decision of the Court of Session in all applications for recall of appointments under this Act shall be final.

5. It shall be competent to the Court of Session, and they are hereby authorised and required, from time to time to pass such acts of sederunt as shall be necessary or proper for regulating or prescribing the manner of appointing Judicial Factors in the sheriff courts, and of finding caution by such Judicial Factors, and the manner in which such Judicial Factors shall discharge their duties, and the manner in which the accountant shall discharge his duties, and the forms of process to be used in pursuance of this Act, and the manner of verifying by affidavit, declaration, certificate, or otherwise the sufficiency of the caution offered for Judicial Factors in the sheriff courts, and all other matters requisite for more effectually carrying out the purposes of this Act.

6. There shall be payable into the fee fund established under the recited Act, by each estate under charge of a Judicial Factor appointed under this Act, such fees as shall from time to time be authorised by the Court of Session, having due regard to the sums required for the purposes of this Act and to the interests of the estates to be benefited thereby ; and out of the said fee fund it shall be lawful for the Lords Commissioners of Her Majesty's Treasury to make such additions as they shall think fit to the salaries of the accountant and clerks appointed and acting under the recited Act, and to grant such salary or salaries as shall seem proper to any other clerk or clerks whom the said Commissioners shall think fit to appoint for the purposes of this Act.

#### CHAP. 5.

#### *County Bridges Loans Extension Act, 1880.*

##### ABSTRACT OF THE ENACTMENTS.

1. *Short title.*
2. *Extension of power to borrow under 4 & 5 Vict. c. 49.*
3. *Interpretation.*

An Act to make provision for borrowing  
in respect of certain County Bridges.  
(19th July 1880.)

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. This Act may be cited as the County Bridges Loans Extension Act, 1880.

2. Where, under section twenty-two of the Highways and Locomotives (Amendment) Act, 1878, the county authority, as defined by that Act, see fit to make a contribution towards the cost of a bridge erected as therein mentioned, they may borrow on mortgage of the county rate

all or any part of the amount of such contribution in the same manner in every respect as if the amount to be borrowed had been the amount of an estimate made and approved in the manner mentioned in the Act of the fourth and fifth years of the reign of Her Majesty, chapter forty-nine, herein-after termed the principal Act; and all the powers, directions, and provisions of the principal Act shall extend and apply to the moneys borrowed under this Act; provided that the sum required for or towards any such contribution as aforesaid may be borrowed in exercise of the power hereby conferred, although the same shall not exceed one fourth of the amount of the ordinary annual assessment in the principal Act referred to.

3. This Act and the Highways and Locomotives (Amendment) Act, 1878, shall be construed as one Act.

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CHAP. 6.

*House Occupiers in Counties Disqualification Removal (Scotland) Act, 1880.*

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ABSTRACT OF THE ENACTMENTS.

1. *Short title.*
2. *Letting as furnished house for certain periods not to disqualify.*

An Act to amend the Representation of  
the People (Scotland) Act, 1868.  
(19th July 1880.)

WHEREAS questions have arisen upon the occupation of houses in counties required by the sixth section of the Representation of the People (Scotland) Act, 1868 :

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. This Act shall be cited for all purposes as the House Occupiers in Counties Disqualification Removal (Scotland) Act, 1880.

2. From and after the passing of this Act every man shall be entitled to be registered and to vote under the provisions of the said section, notwithstanding that during a part of the qualifying period, not exceeding four months in the whole, he shall by letting or otherwise have permitted the qualifying premises to be occupied as a furnished house by some other person.

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CHAP. 7.

*Union Assessment Act, 1880.*

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ABSTRACT OF THE ENACTMENTS.

1. *Short title.*
  2. *Application of 25 & 26 Vict. c. 103. s. 45. to single parishes under separate boards of guardians.*
  3. *Extent of Act.*
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**An Act to extend the Union Assessment Committee Acts to single parishes under separate Boards of Guardians.**  
(19th July 1880.)

WHEREAS under section forty-five of the Union Assessment Committee Act, 1862, as amended by subsequent Acts, it is provided that on the application of the body having the management of the relief of the poor in any union or incorporation under a Local Act, the Local Government Board may order such union or incorporation to be included in the Union Assessment Committee Act, 1862, and it is expedient to make the like provision with respect to single parishes which are not included in any union of parishes either under a Local Act or under the Poor Law Amendment Act, 1834:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as the Union Assessment Act, 1880, and together with the Union Assessment Committee Act, 1862, and the Union Assessment Committee Amendment Act, 1864, may be cited as the Union Assessment Acts, 1862 to 1880.

2. Section forty-five of the Union Assessment Committee Act, 1862, shall apply to a parish which is not included in a union of parishes, and in which the relief of the poor is administered by a board of guardians elected under the Poor Law Amendment Act, 1834, or under any Local Act, in like manner as near as may be as it applies to any union or incorporation for the relief of the poor formed under a Local Act, and the Union Assessment Committee Act, 1862, and the Acts amending the same, shall be construed accordingly; and in relation to any such single parish the expression "common fund" in the said Acts shall be construed to mean the money applicable for the relief of the poor.

3. This Act shall not extend to the Metropolis as defined by the Valuation (Metropolis) Act, 1869.

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CHAP. 8.

*Isle of Man Loans Act, 1880.*

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ABSTRACT OF THE ENACTMENTS.

1. *Short title.*
2. *Power to Government of Isle of Man to borrow.*
3. *Conditions of borrowing.*
4. *Appropriation for payment of loan and interest.*
5. *Application of 38 & 39 Vict. c. 83. to loans under Act.*
6. *Power to adopt 40 & 41 Vict. c. 59.*
7. *Investment by trustees in securities of Government of Isle of Man.*
8. *Application of loans.*
9. *Provision as to the loans on dues of harbours.*
10. *Provision as to Tynwald Court and Governor.*
11. *Repeal of Acts.*

SCHEDULES.

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**An Act to provide for the raising of Loans on behalf of the Isle of Man.**  
(19th July 1880.)

WHEREAS improvements in the harbours of the Isle of Man, and in public works in the Isle of Man, may be effected out of the revenues mentioned in the First Schedule to this Act, and loans, on the security of some of those revenues, may be raised for that purpose by the Isle of

Man Harbour Commissioners, with the approval of the Commissioners of Her Majesty's Treasury (in this Act referred to as the Treasury), and it is expedient to make further provision respecting loans on the security of the said revenues and by the said Commissioners:

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as the Isle of Man Loans Act, 1880.

2. The Government of the Isle of Man may from time to time, with the approval of the Treasury and of the Tynwald Court, borrow such sums as may be so approved for all or any of the purposes following :

- (1.) Paying off any incumbrances for the time being chargeable on any of the revenues mentioned in the First Schedule to this Act or on any part of the public revenue of the Isle of Man ;
- (2.) Effecting improvements in the harbours and other public works in the Isle of Man ; and
- (3.) Carrying into effect any public works or public purposes in the Isle of Man.

3. Sums borrowed under this Act may be borrowed on the security of the revenues mentioned in the First Schedule to this Act, or on any part thereof, without prejudice nevertheless to any charges previously existing thereon, and may be borrowed by means of debentures, debenture stock, or annuity certificates, or partly by one means and partly by another, and, where a sum is borrowed for the purpose of any work for the purpose of which the Public Works Loan Commissioners have power under the Public Works Loans Act, 1875, to lend, such sum or any part thereof may, if those Commissioners think fit to lend it, be lent by those Commissioners and be borrowed by means of a mortgage to those Commissioners.

Every such loan shall be repaid within twenty years from the date at which it is borrowed, or within such further time not exceeding fifty years as the Treasury and Tynwald Court for special reasons approve.

4. The Government of the Isle of Man from time to time shall appropriate, out of the revenues specified in the First Schedule to this Act, the sums required to pay the principal and interest of any loan borrowed in pursuance of this Act, and provide for the sinking fund or other redemption fund (if any) and the expenses incurred in respect of the loan, and shall provide for the payment and application of such sums accordingly.

The Government of the Isle of Man may from time to time appoint agents for the purposes of issuing, managing, and paying the principal and interest of any loan borrowed in pursuance of this Act, and otherwise for the purposes of this Act, or for any of the above-mentioned purposes, and may pay those agents such remuneration as the Treasury allow.

5. For the purpose of any loan under this Act

the following provisions of the Local Loans Act, 1875, that is to say, sections four to ten, thirteen to fifteen, seventeen to twenty-five, and twenty-seven to thirty-four, all inclusive, shall apply as if they were herein enacted, and the following modifications made therein ; that is to say,

- (1.) As if the Government of the Isle of Man, acting with the approval of the Treasury, were substituted for the local authority ;
- (2.) As if all mention of the Local Government Board were omitted ;
- (3.) As if this Act were referred to as the Act authorising the borrowing of money ;
- (4.) As if section fourteen required interest to be repaid in addition to instead of out of the fixed annual sum therein mentioned ; and
- (5.) As if in section twenty-two the Governor were substituted for two members of the local authority, and the Treasury were substituted for the Local Government Board ; and
- (6.) As if for the purposes of section twenty-five the court meant the Court of Chancery of the Isle of Man.

The Government of the Isle of Man may, with the approval of the Treasury and of the Tynwald Court, re-borrow a loan, or any part thereof, so however that for the purpose of the time within which the sum re-borrowed is to be repaid and of sections fourteen and fifteen of the Local Loans Act, 1875, the said loan and the sums re-borrowed shall be deemed to form the same loan.

The Government of the Isle of Man may, with the approval of the Treasury, establish a sinking fund.

Where the Government of the Isle of Man appoint an agent for any purpose of the Local Loans Act, 1875, as incorporated in this section, anything required to be done by, to, or before the local authority may, so far as the appointment of the agent allows, be done by, to, or before the agent.

6. The Government of the Isle of Man, with the approval of the Treasury, may provide for the inscription and transfer in a register kept in the United Kingdom by some bank, officer of the government, or person, of any stock created in pursuance of this Act, and the Colonial Stock Act, 1877, shall apply in like manner as if the Isle of Man were a colony within the meaning of that Act.

The declaration required under section one of that Act may be made by the Governor, and any other thing authorised or required by the said Act to be done by the government of a colony may be done by the Governor, acting with the approval of the Treasury.

7. Any trustees or other persons in the Isle of Man for the time being authorised or directed to invest any moneys in securities in the Isle of Man, and any trustees or other persons for the time being authorised or directed to invest any moneys in the securities of the government of a colony, shall, unless the contrary is provided by the instrument authorising or directing such investment, have the same power of investing the said moneys in any securities of the Government of the Isle of Man under this Act.

8. All moneys received from any loan under this Act shall be applied for the purposes for which the loan is raised, or if so authorised by the Treasury and the Tynwald Court for any other purposes for which a loan can be raised under this Act, and shall be applied and accounted for in such manner as the Treasury and the Governor from time to time direct.

9. Where a loan under this Act is charged on the security of the dues of any harbour, the dues of such harbour shall be applicable for the payment of the principal and interest of such loan in like manner as if the loan had been raised for the improvement of such harbour, and the enactments relating to such dues shall be construed accordingly :

Provided that if the dues received from any harbour are charged under this Act with the principal or interest of any loan or part of a loan not applied to the improvement of that harbour, the amount so charged shall be repaid to the credit of the harbour out of the other revenues mentioned in the First Schedule to this Act.

10. Any approval or other act of the Tynwald Court for the purposes of this Act may be signified by a resolution of that court.

Anything authorised by this Act to be done by the Government of the Isle of Man may be done by the Governor, and if a written document is required, may be done by a document under the hand of the Governor.

In this Act the expression Governor means the Governor, Lieutenant-Governor, or Deputy Governor of the Isle of Man for the time being.

11. The Acts specified in the Second Schedule to this Act are hereby repealed to the extent in the third column of that schedule mentioned, without prejudice to anything previously done under any enactment so repealed, and any loan borrowed in pursuance of any such enactment and the interest thereon shall remain charged and payable in a like manner in all respects as if the said enactment had not been repealed.

#### FIRST SCHEDULE.

##### REVENUES FORMING SECURITY.

One ninth part of the gross amount of the duties of customs collected in the Isle of Man, which under the Isle of Man Customs, Harbours, and Public Purposes Act, 1866, is directed to be applied by the Treasury in affecting improvements in the harbours and other public works in the Isle of Man.

Two ninth parts of the gross amount of the duties of customs of the Isle of Man, which in pursuance of the said Act are authorised to be

charged with loans for the purpose of affecting improvements in the harbours in the Isle of Man.

Such surplus of the customs revenue of the Isle of Man, after paying the charges thereout, as is applicable for the public purposes of the Isle of Man.

The dues received in any of the following harbours, namely, Port Erin or any harbour under the Isle of Man Harbours Act, 1874.

#### SECOND SCHEDULE.

##### ENACTMENTS REPEALED.

26 & 27 Vict. c. 86.	-	The Isle of Man Harbours Act, 1863.	Section four.
29 & 30 Vict. c. 23.	-	The Isle of Man Customs, Harbours, and Public Purposes Act, 1866.	Section six, from "and it shall be lawful for the said harbour commissioners" inclusive to the end of the section.
35 & 36 Vict. c. 23.	-	The Isle of Man Harbours Act, 1872.	Section twenty, so far as it refers to the fifth section of the Isle of Man Customs, Harbours, and Public Purposes Act, 1866.
37 & 38 Vict. c. 8. -	-	The Isle of Man Harbours Act, 1874.	Section seven.

## CHAP. 9.

*Statutes (Definition of Time) Act, 1880.*

## ABSTRACT OF THE ENACTMENTS.

1. *Meaning of expressions relating to time.*
2. *Short title.*

An Act to remove doubts as to the meaning of Expressions relative to Time occurring in Acts of Parliament, deeds, and other legal instruments.

(2nd August 1880.)

WHEREAS it is expedient to remove certain doubts as to whether expressions of time occurring in Acts of Parliament, deeds, and other legal instruments relate in England and Scotland to Greenwich time, and in Ireland to Dublin time, or to the mean astronomical time in each locality :

Be it therefore enacted by the Queen's most

Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows; (that is to say,)

1. Whenever any expression of time occurs in any Act of Parliament, deed, or other legal instrument, the time referred shall, unless it is otherwise specifically stated, be held in the case of Great Britain to be Greenwich mean time, and in the case of Ireland, Dublin mean time.

2. This Act may be cited as the Statutes (Definition of Time) Act, 1880.

## CHAP. 10.

*Great Seal Act, 1880.*

## ABSTRACT OF THE ENACTMENTS.

1. *Short title.*
2. *Commencement of Act.*
3. *Preparation of warrants by Clerk of the Crown in Chancery in lieu of Attorney and Solicitor General.*
4. *Mode of passing Letters Patent for appointment of judges of Court of Appeal.*
5. *Filing of instruments relating to Patents for inventions.*
6. *Act 14 & 15 Vict. c. 82. may be cited as the Great Seal Act, 1851.*

An Act to amend the Law respecting the Manner of passing Grants under the Great Seal, and respecting Officers connected therewith.

(2nd August 1880.)

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. This Act may be cited as the Great Seal Act, 1880.

2. This Act shall come into operation on the first day of November one thousand eight hundred and eighty, which day is in this Act referred to as the commencement of this Act.

3. After the commencement of this Act every warrant for the passing of Letters Patent under the Great Seal of the United Kingdom which is required by the Great Seal Act, 1851, to be pre-

pared by Her Majesty's Attorney and Solicitor General for the time being, or one of them, shall be prepared by the Clerk of the Crown in Chancery and not by the Attorney or Solicitor General.

All records, documents, and papers which are in the possession or under the control of Her Majesty's Attorney and Solicitor General or either of them, or any of their officers, and relate to the preparation of warrants for the passing of Letters Patent under the Great Seal, shall upon the commencement of this Act be transferred to the Clerk of the Crown in Chancery.

4. Whereas by the Supreme Court of Judicature Act, 1875, and the Appellate Jurisdiction Act, 1876, ordinary judges of Her Majesty's Court of Appeal are to be appointed by Her Majesty by Letters Patent, but no provision is made respecting the mode of passing such Letters Patent: Be it therefore enacted as follows:

The Letters Patent for appointing an ordinary judge of Her Majesty's Court of Appeal shall be passed in the same manner in which Letters Patent for appointing the judges of Her Majesty's High Court of Justice are passed under the Great Seal.

5. In the case of Letters Patent for inventions granted before or after the passing of this Act, all instruments required to be filed in the office of the Great Seal Patent Office shall be deemed so filed if filed in the office of the Commissioners of Patents for Inventions.

6. The Act of the session of the fourteenth and fifteenth years of the reign of Her present Majesty, chapter eighty-two, intituled "An Act to simplify the forms of appointment to certain offices, and the manner of passing grants under the Great Seal," is in this Act referred to and may be cited as the Great Seal Act, 1851.

#### CHAP. 11.

#### *Universities of Oxford and Cambridge (Limited Tenures) Act, 1880.*

##### ABSTRACT OF THE ENACTMENTS.

1. *Short title.*
2. *Interpretation of terms.*
3. *Power to extend limited tenures of University and College emoluments.*
4. *Limited emoluments and future elections may be made subject to future statutes.*

An Act to authorize the Extension and further Limitation of the Tenures of certain University and College Emoluments limited or to be limited by Orders of the Oxford and Cambridge Commissioners. (2nd August 1880.)

WHEREAS by the thirty-third section of the Universities of Oxford and Cambridge Act, 1877, it is enacted that the Commissioners (meaning the two bodies of Commissioners therein named respectively) may, if they think fit, by writing under their seal from time to time authorize and direct the University (meaning the University of Oxford or Cambridge, as the case may be) or any College or Hall to suspend the election or appointment to or limit the tenure of any emolument therein mentioned, for a time therein mentioned, within the continuance of the powers of the Commissioners as then ascertained, and that the election or appointment thereto or tenure

thereof shall be suspended or limited accordingly:

And whereas the powers of the Commissioners were by the said Act to continue until the end of the year one thousand eight hundred and eighty, and no longer, but it was enacted that it should be lawful for Her Majesty the Queen from time to time, with the advice of Her Privy Council, on the application of the Commissioners, to continue the powers of the Commissioners for such time as Her Majesty might think fit, but not beyond the end of the year one thousand eight hundred and eighty-one:

And whereas by Orders in Council dated respectively the twenty-fourth day of March and the twenty-eighth day of April one thousand eight hundred and eighty Her Majesty was pleased to continue the powers of the Commissioners until the end of the year one thousand eight hundred and eighty-one:

And whereas before the making of the said Orders in Council the University of Oxford

Commissioners by certain writings under their seal directed that the tenure of certain emoluments mentioned in such writings respectively should be limited until the thirty-first day of December one thousand eight hundred and eighty, being a time within the continuance of the powers of the Commissioners as then ascertained; and the University of Cambridge Commissioners, on the fourteenth day of March one thousand eight hundred and seventy-eight, by certain other writings under their seal authorized and directed the University of Cambridge and every College therein to limit until the same thirty-first day of December one thousand eight hundred and eighty, the tenure of all emoluments which then were or should become vacant, and to which the said University or any of the said colleges should elect or appoint between the said fourteenth day of March one thousand eight hundred and seventy-eight and the thirty-first day of December one thousand eight hundred and eighty:

And whereas it was the intention of the said Commissioners respectively that the tenure of such emoluments so limited by them respectively should be prolonged by statutes to be made under the powers of the said Act so that the same might continue to be held after the thirty-first day of December one thousand eight hundred and eighty, upon such terms and conditions as should be in such statutes contained; but no such statutes can now be made so as to take effect before the said thirty-first day of December one thousand eight hundred and eighty:

And whereas it is expedient that the said Commissioners should be enabled to extend the tenure of emoluments which are now held on tenures so limited by them as herein-before mentioned:

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as the Universities of Oxford and Cambridge (Limited Tenures) Act, 1880.

2. In this Act—

“The Commissioners” mean the Commissioners acting under the Universities of

Oxford and Cambridge Act, 1877, and the provisions of this Act shall apply to each of the two bodies of Commissioners separately;

“The University” means the University of Oxford or that of Cambridge, as the case shall require;

“Emolument” means any University or College emolument within the meaning of the Universities of Oxford and Cambridge Act, 1877.

3. Where the Commissioners have by writing under their seal authorized or directed the University or any College or Hall to limit the tenure of any emolument for a time therein mentioned, and such emolument is at the time of the passing of this Act held on the tenure so limited, the Commissioners may, if they think fit, by writing under their seal direct that the tenure of the said emolument shall be extended for a further time within the continuance of their powers as ascertained at the time of the sealing of such last-mentioned writing; and in every such case the holder of the emolument shall be entitled to continue to hold it during the extended period on the same terms and in the same manner as if such extended period had been the period of tenure fixed by the original limitation.

4. The Commissioners may also, if they think fit, from time to time by writing under their seal, direct that the tenure of any emolument which may have been limited by them under the said recited Act or this Act shall be further extended or that any new election or appointment to any University or College emolument after the passing of this Act shall be made and take effect, subject in each case to the condition that the person whose tenure is so limited, or who shall be so elected or appointed, shall, from and after the approval by Her Majesty in Council of any new statutes which may be made by the Commissioners in relation to such emolument, hold the same subject and according to the provisions of such new statutes (including any provision relating particularly to the person whose tenure is so limited or who shall be so elected or appointed), and such emolument shall be tenable accordingly.

## CHAP. 12.

*Annual Turnpike Acts Continuance Act, 1880.*

## ABSTRACT OF THE ENACTMENTS.

1. *Schedule 1.*
2. *Schedule 2.*
3. *Schedule 3.*
4. *Schedule 4.*
5. *Schedule 5.*
6. *Schedule 6.*
7. *Continuance of all other Turnpike Acts.*
8. *Extent of Act.*
9. *Short title.*

## SCHEDULES.

An Act to continue certain Turnpike Acts, and to repeal certain other Turnpike Acts; and for other purposes connected therewith.

(2nd August 1880.)

WHEREAS it is expedient to continue for limited times some of the Acts herein-after specified, and to repeal others:

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. The Acts specified in the first schedule annexed hereto shall be repealed on and after the dates specified in each instance.

2. The Acts specified in the second schedule annexed hereto shall expire on the first day of November one thousand eight hundred and eighty.

3. The Acts specified in the third schedule annexed hereto shall continue in force until the dates specified in each instance, and no longer.

4. The Acts specified in the first and second columns of the fourth schedule annexed hereto shall, to the extent specified in the third column thereof, as from the dates specified in the fourth column thereof, be subject to the modifications specified in the fifth column thereof, and shall, to the same extent, as so modified, continue in

force until the dates specified in the sixth column thereof, and no longer.

5. The Acts specified in the fifth schedule annexed hereto shall continue in force until the first day of November one thousand eight hundred and eighty-one, and no longer, unless Parliament in the meantime otherwise provides.

6. The Acts specified in the sixth schedule annexed hereto shall be repealed on and after the first day of November one thousand eight hundred and eighty-one, unless Parliament in the meantime otherwise provides, due regard being had in each case to local requirements, and to the special circumstances of the trust.

7. Such provisions, if any, of the said Acts mentioned in the said schedules as are not affected by the preceding sections, and all other Acts now in force for regulating, making, amending, or repairing any turnpike road which will expire at or before the end of the next session of Parliament, shall continue in force until the first day of November one thousand eight hundred and eighty-one, and to the end of the then next session of Parliament, unless Parliament in the meantime otherwise provides; but this section shall not affect any Act continued to a specified date and no longer.

8. This Act shall not apply to Scotland or Ireland.

9. This Act may be cited for all purposes as the Annual Turnpike Acts Continuance Act, 1880.

## SCHEDULES.

## SCHEDULES 1 to 4.

County.	Name of Trust.	No. of Schedule.	No. of Act.
Chester -	Stockport and Warrington and Washway United -	4	13, 16
Cornwall -	Hayle Bridge Causeway - - - -	4	15
	Launceston - - - -	1	2
Derby -	Derby and Burton-upon-Trent - - - -	4	12
Devon -	Barnstaple - - - -	2	7
	Great Torrington - - - -	2	6
Gloucester -	Huntley Roads - - - -	2	8
Hants -	Andover and East Ilsley - - - -	1	1
	Southampton, South District - - - -	3	9
Herts -	Reading and Hatfield - - - -	3	11
Lancaster -	Blackburn and Walton Cop - - - -	4	14
	Rochdale and Burnley - - - -	2	4
Northumberland	Elsdon and Reedwater - - - -	2	3
Surrey -	Horsham and Dorking - - - -	2	5
Anglesey -	Beaumaris and Menai Bridge - - - -	3	10

## FIRST SCHEDULE.

Section 1.

Acts which are to be repealed on and after the dates specified in each instance.

Date of Act.	Title of Act.
27 & 28 Vict. c. xliii. - <i>Limited to expire at end of session after 29th September 1885.</i>	1. An Act to repeal an Act for repairing the road from the present turnpike road in the parish of Hursley, in the county of Southampton, to Andover, and from thence to Newbury, and from Newbury to Chilton Pond, in the county of Berks, and for granting more effectual powers in lieu thereof; <i>which shall be repealed on and after the 29th of September 1880.</i>
30 Vict. c. xxxiv. - <i>Limited to expire at end of session after 1st January 1882.</i>	2. An Act to repeal an Act passed in the fifth year of the reign of His late Majesty King William the Fourth, intituled "An Act for more effectually repairing the Launceston turnpike roads, and making "certain additional roads," and to make other provisions in lieu thereof, and for other purposes; <i>which shall be repealed on and after the 1st of September 1880.</i>

## SECOND SCHEDULE.

## Section 2.

Acts which are to continue in force until the 1st of November 1880, and no longer.

Date of Act.	Title of Act.
1 & 2 G. 4. c. xciii.	3. An Act to continue the term and alter and amend the powers of two Acts for repairing the road from Elsdon High Cross, near the town of Elsdon, in the county of Northumberland, to the Red Swyre upon the mid-border betwixt England and Scotland.
7 W. 4. c. vi.	4. An Act for repairing, maintaining, and improving the road from the town of Rochdale to near Hand Bridge, near the town of Burnley, and other roads communicating therewith, and for making and maintaining other roads, also to communicate therewith, all in the county palatine of Lancaster.
21 & 22 Vict. c. xlix.	5. An Act for repairing and maintaining the road from Horsham, in the county of Sussex, through Dorking and Leatherhead to Epsom, in the county of Surrey, and from Capel to Stone Street at Ockley, in the said county of Surrey.
28 Vict. c. lxxx.	6. An Act for more effectually maintaining and repairing several roads adjoining or near to the town of Great Torrington, in the county of Devon; and for new powers; and for other purposes.
28 & 29 Vict. c. clxiii.	7. An Act to repeal an Act passed in the fourth year of the reign of Her present Majesty Queen Victoria, intituled "An Act for repairing several roads leading from the town of Barnstaple, in the county of Devon, and for making several new lines of road connected therewith," and to grant more effectual powers in lieu thereof; to convert into turnpike road portions of existing roads; and for other purposes.
29 & 30 Vict. c. c.	8. An Act to continue the Huntley, Mitcheldean, and Elton Turnpike Roads Trust, in the counties of Gloucester and Hereford; and for other purposes.

## THIRD SCHEDULE.

## Section 3.

Acts which are to continue in force until the dates specified in each instance, and no longer.

Date of Act.	Title of Act.
4 G. 4. c. xv.	9. An Act for repairing and improving the roads from the town of Stockbridge to the city of Winchester, and from the said city of Winchester to the top of Stephen's Castle Down, near the town of Bishop's Waltham, in the county of Southampton, and from the said city of Winchester through Otterborne to Bar Gate in the town and county of the town of Southampton, and certain roads adjoining thereto; <i>which, so far as the same relates to the south district of the Southampton Road, shall continue in force until the 1st of November 1885, and no longer.</i>
9 G. 4. c. xxxiii.	10. An Act for making and maintaining a road from the town of Beaumaris to join the London and Holyhead Post Road at or near to the Menai Bridge, all in the county of Anglesey; <i>which shall continue in force until the 1st of November 1885, and no longer.</i>
22 & 23 Vict. c. xi.	11. An Act for the Reading and Hatfield turnpike roads in the counties of Berks, Bucks, Oxford, and Hertford; <i>which shall continue in force until the 7th of November 1881, and no longer.</i>

## Section 4.

## FOURTH SCHEDULE.

Acts which are to continue in force until the dates specified in each instance, and no longer, subject to modifications.

1. Date of Act.	2. Title of Act.	3. Extent to which Act is modified and continued.	4. Dates from which Modifications are to commence.	5. Modifications.	6. Dates up to which Continuation is enacted.
58 G. 3. c. xxxvi.	12. An Act for more effectually repairing and improving the road from the west end of the town of Burton-upon-Trent, in the county of Stafford, through the said town, to the south end of the town of Derby, in the county of Derby.	The entire Act	1 November 1880.	Amount expended in repair of roads to be not less than 450 <i>l.</i> per annum. No interest payable.	1st of November 1884, and no longer.
7 & 8 G. 4. c. xc.	13. An Act for more effectually repairing and otherwise improving the road from Croesford Bridge, in the county palatine of Lancaster, to Altrincham, in the county palatine of Chester.	The entire Act	1 November 1880.	The road from Newbridge Hollow to Agden to cease to belong to the trust.	1st of November 1885, and no longer.
11 G. 4. c. lxxxv.	14. An Act for more effectually repairing the road from Blackburn to Walton Cop, within Walton-in-le-Dale, in the county of Lancaster.	The entire Act	1 November 1880.	Not less than 300 <i>l.</i> to be expended in repair of roads between the 1st of November 1880 and the 25th of March 1881. No interest payable.	25th of March 1881, and no longer.
7 W. 4. c. li.	15. An Act for maintaining the causeway and turnpike road from Grigg's Quay, in the parish of Unv Lelant, over Havle river and the said causeway towards Penzance.	The entire Act	1 November 1880.	No larger rates of toll to be taken than those now levied. No interest payable.	1st of November 1885, and no longer.
19&20 Vict. c. lxvi.	16. An Act for more effectually repairing certain roads in the county of Lincoln, the short title is "Road Act, 1856."	The entire Act	1 November 1880.	The road from Newbridge Hollow to Agden to cease to belong to the trust.	1st of November 1885, and no longer.

## FIFTH SCHEDULE.

Section 5.

Acts which are to continue in force until the 1st of November 1881, and no longer, unless Parliament in the meantime otherwise provides.

County.	Name of Trust.	No. of Act.
Chester - -	Congleton and Burton - - - - -	3
Derby - -	Haddon and Bentley - - - - -	2
Lancaster - -	Haslingden and Todmorden - - - - -	1

Date of Act.	Title of Act.
20 & 21 Vict. c. cxliv. -	1. An Act for repairing the road from Haslingden to Todmorden, and several branches therefrom, all in the county palatine of Lancaster; and for other purposes.
28 & 29 Vict. c. ccvii. -	2. An Act for repairing the road from the Guide Post below Haddon out of the Bakewell turnpike road into the Bentley and Ashbourne turnpike road, in the county of Derby; and for other purposes.
29 Vict. c. lvi. -	3. An Act to extend the term and amend the provisions of an Act for repairing, amending, and maintaining the road from Congleton, in the county of Chester, to a branch of the Leek turnpike road at Thatchmarsh Bottom, in the parish of Hartington, in the county of Derby, and from the Lowe to the Havannah Mills, in the said county of Chester.

## SIXTH SCHEDULE.

Section 6.

Acts which are to be repealed on and after the 1st of November 1881, unless Parliament in the meantime otherwise provides, due regard being had in each case to local requirements, and to the special circumstances of the Trust.

County.	Name of Trust.	No. of Act.
Chester - -	Manchester and Wilmslow - - - - -	2
Cornwall - -	Saltash - - - - -	4
Cumberland -	Carlisle and Eamont Bridge, Southern Division - -	1
Derby - -	Ashbourne, Sudbury, and Yoxall Bridge - - -	3

Date of Act.	Title of Act.
22 & 23 Vict. c. xxv. - <i>Limited to expire at end of session after 18th August 1882.</i>	1. An Act to repeal an Act passed in the eleventh year of the reign of King George the Fourth, chapter one hundred and ten, intituled "An Act for more effectually repairing the road from Carlisle to Penrith, " and from Penrith to Eamont Bridge, in the county of Cumberland," and to make other provisions in lieu thereof; <i>so far as the same relates to the southern division of the road.</i>
24 & 25 Vict. c. lxxv. - <i>Limited to expire at end of session after 28th June 1882.</i>	2. An Act for the Manchester and Wilmslow turnpike roads, in the counties palatine of Lancaster and Chester.
26 & 27 Vict. c. xcvi. - <i>Limited to expire at end of session after 29th June 1888.</i>	3. An Act to repeal an Act passed in the eleventh year of the reign of His late Majesty King George the Fourth, intituled "An Act for repairing, altering, and improving the roads from Ashbourne to Sudbury, and from Sudbury to Yoxall Bridge, and from Hatton Moor to Tutbury, and from Uttoxeter to or near the village of Draycott-in-the-Clay, and from Hadley Plain on the late forest or chase of Needwood to Callington Plain on the same late forest or chase," and to make other provisions in lieu thereof; <i>so far as the same relates to the Sudbury district of the roads.</i>
29 & 30 Vict. c. cix. - <i>Limited to expire at end of session after 1st November 1881.</i>	4. An Act to repeal an Act passed in the third year of the reign of His Majesty King William the Fourth, intituled "An Act for more effectually repairing and improving several roads in the counties of Cornwall and Devon, leading to the borough of Saltash, in the county of Cornwall, and for making a new branch and deviations of roads to communicate therewith," and for granting more effectual powers in lieu thereof.

## CHAP. 13.

*Births and Deaths Registration Act (Ireland), 1880.*

## ABSTRACT OF THE ENACTMENTS.

*Registration of Births.*

1. Information concerning birth to be given to registrar within forty-two days.
2. Requisition by registrar of information concerning birth from qualified informant after forty-two days.
3. Information respecting finding new-born child to be given to registrar.
4. Duty of registrar to ascertain and register birth gratis.
5. Registry after expiration of three months from birth.
6. Registry of birth out of the district in case of removal.
7. Saving for father of illegitimate child.
8. Registration of name of child or of alteration of name.

*Registration of Deaths.*

9. Registry of death and cause of death.
10. Information concerning death where deceased dies in a house.
11. Information concerning death where deceased dies not in a house.
12. Notice preliminary to information.
13. Requisition by registrar of information concerning death from qualified informant.
14. Duty of registrar to register death gratis.

15. *Death not to be registered after twelve months.*

16. *Furnishing of information by coroner.*

#### *Burials.*

17. *Coroner's order and registrar's certificate for burial.*

18. *Burial of deceased children as still-born.*

19. *Notice where coffin contains more than one body.*

#### *Certificates of Cause of Death.*

20. *Regulations as to certificates of cause of death.*

#### *Superintendent Registrars and Registrars.*

21. *Assistant registrar to be appointed.*

22. *Interim registrars.*

23. *Fees of superintendent registrars and registrars.*

24. *Certificates of birth having been registered.*

25. *Supply of forms and making of indexes.*

26. *Penalty on registrar for refusal or omission to register or to forward declaration, or on persons having custody of books for loss or injury thereto.*

#### *Correction of Errors.*

27. *Correction of errors in registers of births and deaths.*

#### *Miscellaneous.*

28. *Register when not evidence.*

29. *Penalty for not giving information, complying with requisition, &c.*

30. *Penalty for false statements, &c.*

31. *Sending certificates, &c. by post.*

32. *Explanation of s. 3. of 26 Vict. c. 11.*

33. *Use of forms.*

34. *Power of Lord Lieutenant and Registrar General to alter forms in schedules under 26 Vict. c. 11., and make regulations.*

35. *Recovery of penalties.*

36. *Time for prosecution of offence.*

37. *Particulars required to be registered concerning birth or death.*

38. *Interpretation.*

39. *Definition of registrar and superintendent registrar.*

40. *Commencement of Act.*

41. *Extent of Act.*

42. *Construction of Act.*

43. *Short title.*

#### *Repeal.*

44. *Repeal.*

#### **SCHEDULES.**

An Act to amend the Law in Ireland relating to the Registration of Births and Deaths. (2nd August 1880.)

WHEREAS it is expedient to amend the Acts relating to the registration of births and deaths in Ireland:

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons,

in this present Parliament assembled, and by the authority of the same, as follows:

#### *Registration of Births.*

1. In the case of every child born alive after, or whose birth has not been registered previous to the commencement of this Act, it shall be the duty of the father and mother of the child, and in default of the father and mother, of the

occupier of the house in which to his knowledge the child is born, and of each person present at the birth, and of the person having charge of the child, to give to the registrar, within forty-two days next after such birth, information of the particulars required to be registered concerning such birth, and in the presence of the registrar to sign the register.

2. Where a birth has, from the default of the parents or other persons required to give information concerning it, not been duly registered, the registrar may, at any time after the end of forty-two days from such birth, by notice in writing, require any of the persons required by this Act to give information concerning such birth to attend personally at the registrar's office, or at any other convenient place appointed by the registrar within his district, within such time (not less than seven days after the receipt of such notice, and not more than three months from the date of the birth) as may be specified in such notice, and to give information, to the best of such person's knowledge and belief, of the particulars required to be registered concerning such birth, and to sign the register in the presence of the registrar; and it shall be the duty of such person, unless the birth is registered before the expiration of the time specified in such requisition, to comply with such requisition.

3. In case any living new-born child is found exposed it shall be the duty of any person finding such child, and of any person in whose charge such child may be placed, to give, to the best of his knowledge and belief, to the registrar, within seven days after the finding of such child, such information of the particulars required to be registered concerning the birth of such child as the informant possesses, and in the presence of the registrar to sign the register.

4. It shall be the duty of the registrar to inform himself carefully of every birth which happens within his district, and upon receiving, personally, from the informant at any time within three months from the date of the birth of any child, or the finding of any living new-born child, information of the particulars required to be registered concerning the birth of such child, forthwith, in the prescribed form and manner, to register the birth and the said particulars (if not previously registered), without fee or reward from the informant.

5. After the expiration of three months next after the birth of any child, whether born before or after the commencement of this Act, a registrar shall not register such birth except as in this

section provided; that is to say, in case the birth of any child has not been registered in accordance with the principal Act the registrar may, after three and not later than twelve months next after the birth, by notice in writing, require any of the persons required by this Act to give information concerning the birth to attend personally at the register office within such time (not less than seven days after the receipt of the notice, and not more than twelve months after the date of the birth) as may be specified in the notice and to produce a solemn declaration (Form A., Schedule 3), made before a justice of the peace, according to the best of the declarant's knowledge and belief, of the particulars required to be registered concerning the birth, and sign the register in the presence of the registrar; and upon any of the said persons attending before a registrar, whether in pursuance of a requisition or not, and producing such a declaration as aforesaid, and giving information concerning the birth, the registrar shall then and there register the birth according to the information of the declarant, and both the registrar and declarant shall sign the entry of the birth, and the registrar shall forward such declaration to the superintendent registrar together with the quarterly returns.

After the expiration of twelve months next after the birth of any child that birth shall not be registered except with the written authority of the Registrar General for registering the same, and except in accordance with the prescribed rules, and the fact of such authority having been given shall be entered in the register.

Every person who registers or causes to be registered the birth of any child in contravention of this section shall be liable to a penalty not exceeding ten pounds.

6. Any person required by this Act to give information concerning a birth, who removes before such birth is registered out of the district in which such birth has taken place, may, within three months after such birth, give the information by making and signing, in the presence of the registrar of the district in which he resides, a declaration in writing (Form B., Schedule 3) of the particulars required to be registered concerning such birth; and such registrar, on payment of the appointed fee, shall receive and attest the declaration, and send the same to the registrar of the district in which the birth took place; and the last-mentioned registrar shall, in the prescribed manner, enter the birth in the register, and the registrar shall state in the informant's column of the entry that the information was obtained from a declaration, and the entry so made shall be deemed, for the purposes of the principal Act, to have been signed by the person

who signed the declaration, and the registrar shall forward such declaration to the superintendent registrar with the quarterly returns.

A person making a declaration in pursuance of this section in the case of any birth shall be deemed to have complied with the provisions of this Act as to giving information concerning that birth, and with any requisition of the registrar made under this Act within the said three months to attend and give information concerning that birth.

7. In the case of an illegitimate child no person shall, as father of such child, be required to give information under this Act concerning the birth of such child, and the registrar shall not enter in the register the name of any person as father of such child, unless at the joint request of the mother and of the person acknowledging himself to be the father of such child, and such person shall, in such case, sign the register, together with the mother.

8. When the birth of any child has been registered and the name, if any, by which it was registered is altered, or if it was registered without a name, when a name is given to it, the parent or guardian of such child, or other person procuring such name to be altered or given, may, within twelve months next after the registration of the birth, deliver to the registrar or superintendent registrar such certificate as herein-after mentioned, and the registrar or superintendent registrar, upon the receipt of that certificate, and on payment of the appointed fee, shall, without any erasure of the original entry, forthwith enter in the proper column of the entry in the register book the name mentioned in the certificate as having been given to the child, and having stated upon the certificate the fact of such entry having been made shall forthwith send the said certificate through the post office to the Registrar General, who shall, if the birth has been already included in the quarterly return, add the name to the certified copy in his office, and such addition to the entry shall be held to be as good as if part of the original entry.

The certificate shall be in the Form A. or B. in the First Schedule hereunto annexed, and shall be signed by the minister or person who performed the rite of baptism upon which the name was given or altered, or if the child is not baptized shall be signed by the father, mother, or guardian of the child, or other person procuring the name of the child to be given or altered.

Every minister or person who performs the rite of baptism shall deliver the certificate required by this section, on demand, on payment of a fee of one shilling.

The provisions of this section shall apply with

the prescribed modifications in the case of births at sea, of which a return is sent to the Registrar General of Births and Deaths in Ireland.

#### *Registration of Deaths.*

9. The death of every person dying in Ireland after the commencement of this Act, and the cause of such death, shall be registered by the registrar in the manner directed by the principal Act and this Act.

10. When a person dies in a house after the commencement of this Act it shall be the duty of the nearest relatives of the deceased present at the death, or in attendance during the last illness of the deceased, and in default of such relatives, of every other relative of the deceased dwelling or being in the same district as the deceased, and in default of such relatives of each person present at the death, and of the occupier of the house in which, to his knowledge, the death took place, and in default of the persons herein-before in this section mentioned, of each inmate of such house, and of the person causing the body of the deceased person to be buried, to give, to the best of his knowledge and belief, to the registrar, within the five days next following the day of such death, information of the particulars required to be registered concerning such death, and in the presence of the registrar to sign the register.

11. Where a person dies in a place which is not a house, or a dead body is found elsewhere than in a house, it shall be the duty of every relative of such deceased person having knowledge of any of the particulars required to be registered concerning the death, and in default of such relative, of every person present at the death, and of any person finding, and of any person taking charge of the body, and of the person causing the body to be buried, to give to the registrar, within the five days next after the death or the finding, such information of the particulars required to be registered concerning the death as the informant possesses, and in the presence of the registrar to sign the register.

12. If a person required to give information concerning any deaths sends to the registrar a written notice of the occurrence of the death, accompanied by such medical certificate of the cause of the death as is required by this Act to be delivered to a registrar, the information of the particulars required by the principal Act to be registered concerning the death need not be given within the said five days, but shall, notwithstanding such notice, be given within fourteen days next after the day of the death by the

person giving such notice, or some other person required by this Act to give the information.

13. Where any death has from the default of the persons required to give information concerning it not being registered, the registrar may, at any time after the expiration of fourteen days, and within twelve months from the day of such death, or from the finding of the dead body elsewhere than in a house, by notice in writing, require any person required by this Act to give information concerning such death to attend personally at the registrar's office, or at any other place appointed by the registrar within his district, within such time (not less than seven days after the receipt of the notice, nor more than twelve months after the death or finding of the dead body,) as may be specified in the notice, and to give the said information to the best of the informant's knowledge and belief, and to sign the register in the presence of the registrar; and it shall be the duty of such person, unless the death is registered before the expiration of the time specified in the requisition, to comply with the requisition.

14. It shall be the duty of the registrar to inform himself carefully of every death which happens within his district, and upon receiving personally from the informant at any time within twelve months after the date of any death, or of the finding of any dead body, information of the particulars required to be registered concerning the death from any person required by this Act to give the same, forthwith in the prescribed form and manner to register the death, and the said particulars (if not previously registered), without fee or reward from the informant.

15. After the expiration of twelve months next after any death, or after the finding of any dead body elsewhere than in a house, that death shall not be registered except with the written authority of the Registrar General for registering the same, and except in accordance with the prescribed rules, and the fact of such authority having been given shall be entered in the register.

Every person who registers or causes to be registered any death in contravention of this section shall be liable to a penalty not exceeding ten pounds.

16. Where an inquest is held on any dead body the jury shall inquire of the particulars required to be registered concerning the death, and the coroner shall send to the registrar, within five days after the finding of the jury is given, a certificate under his hand, giving information concerning the death and specifying the finding

of the jury with respect to the said particulars, and to the cause of death, and specifying the time and place at which the inquest was held, and the registrar shall, in the prescribed form and manner, enter the death and particulars, and the registrar shall state in such entry that the information was received from the coroner.

Where an inquest is held on any dead body no person shall, with respect to such dead body or death, be liable to attend upon a requisition of a registrar, or be subject to any penalty for failing to give information in pursuance of any other provision of this Act.

#### *Burials.*

17. A coroner upon holding an inquest on any body may, if he thinks fit, by order under his hand, authorise the body to be buried before registry of the death, and shall give such order to the relative of the deceased or other person who causes the body to be buried, or to the undertaker or other person having charge of the funeral; and, except upon holding an inquest, no order, warrant, or other document for the burial of any body shall be given by the coroner.

The registrar upon registering any death, or upon receiving a written notice of the occurrence of a death, accompanied by a medical certificate as is before provided by this Act, shall forthwith, or as soon after as he is required, give, without fee or reward, either to the person giving information concerning the death or sending the requisition or notice, or to the undertaker or other person having charge of the funeral of the deceased, a certificate as set forth in Form D., Schedule I, or as near thereto as may be, under his hand that he has registered or received notice of the death, as the case may be.

Every such order of the coroner and certificate of the registrar shall be delivered to the person who buries or performs any funeral or religious service for the burial of the body of the deceased; and any person to whom such order or certificate was given by the coroner or registrar who fails so to deliver or cause to be delivered the same shall be liable to a penalty not exceeding forty shillings.

The person who buries or performs any funeral or religious service for the burial of any dead body, as to which no order or certificate under this section is delivered to him, shall, within seven days after the burial, give notice thereof in writing to the registrar or Registrar General, and if he fail so to do shall be liable to a penalty not exceeding ten pounds: Provided, that such notice may be comprised in and form part of the returns which the clerk, or secretary, or registrar to every burial board and cemetery company, or other authority having charge of any burial ground, is required to make in accordance with the provisions of the one hundred and ninety-first section

of the Public Health (Ireland) Act, 1878, as amended by the Public Health (Ireland) Amendment Act, 1879.

18. A person shall not wilfully bury or procure to be buried the body of any deceased child as if it were still-born.

A person who has control over or ordinarily buries bodies in any burial ground shall not permit to be buried in such burial ground the body of any deceased child as if it were still-born, and shall not permit to be buried or bury in such burial ground any still-born child before there is delivered to him either—

- (a.) A written certificate that such child was not born alive, signed by a registered medical practitioner who was in attendance at the birth or has examined the body of such child; or
- (b.) A declaration signed in the presence of the person giving permission for such burial by some person who would, if the child had been born alive, have been required by this Act to give information concerning the birth, or by the person to whom such permission is given, to the effect that no registered medical practitioner was present at the birth, or that his certificate cannot be obtained, and that the child was not born alive; or
- (c.) If there has been an inquest, an order of the coroner.

Any person who acts in contravention of this section shall be liable to a penalty not exceeding ten pounds.

19. Where there is in the coffin in which any deceased person is brought for burial the body of any other deceased person, or the body of any still-born child, the undertaker or other person who has charge of the funeral shall deliver to the person who buries or performs any funeral or religious service for the burial of such body or bodies, notice in writing signed by such undertaker or other person, and stating to the best of his knowledge and belief with respect to each such body the following particulars:

- (a.) If the body be the body of a deceased person the name, sex, and place of abode of the said deceased person;
- (b.) If the body has been found exposed, and the name and place of abode are unknown, the fact of the body having been so found and of the said particulars being unknown; and
- (c.) If the body be that of a deceased child without a name, or a still-born child, the name and place of abode of the father, or, if it is illegitimate, of the mother of such child.

Such notice in writing shall, within five days from the day of burial, be forwarded by the person who receives same to the registrar of the district in which the deceased died or to the Registrar General, as the Local Government Board for Ireland may from time to time direct.

Every person who fails to comply with the requirements of this section shall be liable to a penalty not exceeding ten pounds.

#### *Certificates of Cause of Death.*

20. With respect to certificates of the cause of death the following provisions shall have effect:

- (1.) The Registrar General shall from time to time furnish to every registrar printed forms of certificates of cause of death by registered medical practitioners, and every registrar shall furnish such forms gratis to any registered medical practitioner residing or practising in such registrar's district:
- (2.) In case of the death of any person who has been attended during his last illness by a registered medical practitioner, that practitioner shall sign and give to some person required by this Act to give information concerning the death a certificate stating to the best of his knowledge and belief the cause of death, and such person shall deliver or cause to be delivered that certificate to the registrar, and the cause of death as stated in that certificate shall be entered in the register:
- (3.) Where an inquest is held on the body of any deceased person a medical certificate of the cause of death need not be given to the registrar, but the certificate of the finding of the jury furnished by the coroner shall be sufficient.

If any person to whom a medical certificate is given by a registered medical practitioner in pursuance of this section shall fail to deliver or cause to be delivered that certificate to the registrar within five days of its receipt, he shall be liable to a penalty not exceeding forty shillings.

#### *Superintendent Registrars and Registrars.*

21. Every superintendent registrar and registrar shall, subject to the approval of the Registrar General, appoint, by writing under his hand, a fit person to act with him as assistant registrar; and every such assistant superintendent registrar or assistant registrar, while so acting, shall, subject to the control of the superintendent registrar or registrar, have all the powers, and perform all the duties, and be subject to all the penalties herein declared concerning superintendent registrars and registrars respectively; and every superintendent registrar or registrar shall be

civilly responsible for the acts and omissions of his assistant.

From and after the commencement of this Act every deputy superintendent registrar and deputy registrar shall be, and be styled, assistant superintendent registrar, or assistant registrar, as the case may be, but nothing in this Act shall affect the rights or positions of existing deputy superintendent registrars or deputy registrars.

Every such assistant shall hold his appointment during the pleasure of the superintendent registrar or registrar by whom he is appointed, but shall be removable from his office by the Registrar General.

22. If any superintendent registrar dies, resigns, or otherwise ceases to hold his office, his assistant, if any, and if none, such person as the Registrar General may appoint, shall be interim superintendent registrar.

Every interim superintendent registrar shall act as superintendent registrar, and have all the powers, and perform all the duties, and be subject to all the obligations of a superintendent registrar until another is duly appointed.

The provisions of this section shall apply to a registrar in like manner as if it were enacted with the substitution of the word registrar for superintendent registrar.

If a registrar for any district dies, resigns, or otherwise ceases to hold his office, and there is no interim registrar, then the superintendent registrar shall, when so required by the Registrar General, appoint an interim registrar for such district.

23. Every superintendent registrar and registrar respectively shall be entitled to the fees specified in the Second Schedule to this Act, and every such fee shall be paid to him by the persons and on the occasions pointed out in such schedule and may be recovered as a debt due to him, and, subject to the prescribed rules, he may refuse to comply with any application voluntarily made to him until the fee is paid.

24. A registrar shall, upon demand made at the time of registering any birth by the person giving the information concerning the birth, and upon payment of a fee not exceeding threepence, give to such person a certificate under his hand, in the prescribed form (E. in First Schedule), of having registered that birth.

25. The Registrar General shall supply to every superintendent registrar suitable forms wherein to make indexes of the register books in his office, and such superintendent registrar shall cause such indexes to be made in such form and manner as may from time to time be directed by

the Registrar General, and to be kept with the other records of his office.

All such indexes, whether made before or after the commencement of this Act, shall be kept by the superintendent registrar with the records of his office, and shall be delivered with the same to his successor in office, as directed by the principal Act.

Subject to such regulations as shall be made from time to time by the Registrar General with the approval of the Lord Lieutenant, every person shall be entitled at all reasonable times to search the said indexes, and also the register books, and to have a certified copy of any entry or entries in any register book, under the hand of the superintendent registrar or registrar, as the case may be, who shall have the custody of the same for the time being, on payment in each case of the appointed fee, in addition to the stamp duty of one penny imposed by the Act of the session held in the thirty-third and thirty-fourth years of the reign of Her present Majesty, chapter ninety-seven.

26. Every registrar who refuses, or, without reasonable cause, omits to register any birth or death or particulars concerning which information has been tendered to him by an informant, and which he ought to register, or neglects to forward to the registrar of another district the declaration required by section six of this Act, and every person having the custody of any register book of births and deaths who carelessly loses or injures or allows the injury of the same, shall be liable to a penalty not exceeding fifty pounds.

#### *Correction of Errors.*

27. With regard to the correction of errors in registers of births and deaths it shall be enacted as follows :

- (1.) No alteration in any such register shall be made except as authorised by this Act.
- (2.) Any clerical errors, whether they occurred before or after the commencement of this Act, which may from time to time be discovered in any such register may be corrected by any person authorised in that behalf by the Registrar General, subject to the prescribed rules.
- (3.) An error of fact or substance in any such register may be corrected by entry in the margin (without any alteration of the original entry) by the officer having the custody of the register upon payment of the appointed fee, and upon production to him by the person requiring such error to be corrected of a statutory declaration (Form C., Schedule Three), setting forth the nature of the error and the true facts of the case, and

made by one or more persons required by this Act to give information concerning the birth or death with reference to which the error has been made, or in default of such persons, then by two credible persons having knowledge of the truth of the case; and it shall be the duty of the registrar, on becoming aware of any error in fact or substance, to send a requisition to the informant requiring him to attend and correct same.

- (4.) Where an error of fact or substance (other than an error relating to the cause of death) occurs in the information given by a coroner's certificate concerning a dead body upon which he has held an inquest, the coroner, if satisfied by evidence on oath or statutory declaration that such error exists, may certify under his hand (Form D., Schedule Three,) to the officer having the custody of the register in which such information is entered the nature of the error and the true facts of the case as ascertained by him on such evidence, and the error may thereupon be corrected by such officer in the register, by entering in the margin (without any alteration of the original entry) the facts as so certified by the coroner, and such declaration or certificate shall accompany the quarterly certified copies.

And whenever such correction shall have been made in any entry of birth or death subsequently to the transmission to the General Register Office of the return of certified copies containing such entry, such declaration or certificate of coroner shall be forthwith sent through the post office to the Registrar General, who shall cause such correction to be made in the certified copy, and such addition shall be held to be good as if part of the original entry.

#### *Miscellaneous.*

28. An entry, or certified copy of an entry, of a birth or death in a register under the principal Act, or in a certified copy of such a register, shall not be evidence of such birth or death, unless such entry either purports to be signed by some person professing to be the informant, and to be such a person as is required by law at the date of such entry to give to the registrar information concerning such birth or death, or purports to be made upon a certificate from a coroner, or in pursuance of the provisions of this Act with respect to the registration of births and deaths at sea, or in pursuance of section six of this Act.

When more than three months have intervened between the day of the birth and the day of the

registration of the birth of any child, the entry or certified copy of the entry made after the commencement of this Act of the birth of such child in a register under the principal Act, or in a certified copy of such a register, shall not be evidence of such birth, unless such entry purports,—

- (a.) If it appear that not more than twelve months have so intervened, to contain a marginal note that a statutory declaration has been made by a properly qualified informant;
- (b.) If more than twelve months have so intervened, to have been made with the authority of the Registrar General, and in accordance with the prescribed rules.

Where more than twelve months have intervened between the day of a death or the finding of a dead body and the day of the registration of the death or the finding of such body, the entry or certified copy of the entry made after the commencement of this Act of the death in a register under the principal Act, or in a certified copy of such register, shall not be evidence of such death, unless such entry purports to have been made with the authority of the Registrar General, and in accordance with the prescribed rules.

29. Any person required by the principal Act, or this Act, to give information concerning any birth or death, or any living new-born child, or any dead body, who shall neglect or refuse to give such information, or shall wilfully refuse to answer any question put to him by the registrar, relating to the particulars required to be registered concerning such birth or death, or shall fail to comply with any requisition of the registrar made in pursuance of the principal Act or this Act, and every person who shall refuse or fail, without reasonable excuse, to give or send any certificate in accordance with the provisions of the principal Act or this Act, shall be liable to a penalty not exceeding forty shillings for each offence; and the parent of any child who fails to give information concerning the birth of such child as required by the principal Act or this Act shall be liable to a like penalty; and a person required by the principal Act or this Act to give information concerning a death in the first instance, and not merely in default of some other person, shall, if such information as is required by the principal Act or this Act be not duly given, be liable to the same penalty.

30. Any person who commits any of the following offences; that is to say,

- (1.) Wilfully makes any false answer to any question put to him by a registrar relating to the particulars required to be registered concerning any birth or death, or wilfully gives to a registrar any false

information concerning any birth or death, or the cause of any death; or

- (2.) Wilfully makes any false certificate or declaration under or for the purposes of this Act, or forges or falsifies any such certificate or declaration, or any order under this Act, or, knowing any such certificate, declaration, or order to be false or forged, uses the same as true, or gives or sends the same as true, to any person; or
- (3.) Wilfully makes, gives, or uses any false statement or representation as to a child born alive having been still-born, or as to the body of a deceased person or a still-born child in any coffin, or falsely pretends that any child born alive was still-born; or
- (4.) Makes any false statement with intent to have the same entered in any register of births or deaths,

shall for each offence be liable on summary conviction to a penalty not exceeding ten pounds, and on conviction on indictment to fine, or to imprisonment, with or without hard labour, for a term not exceeding two years, or to penal servitude for a term not exceeding seven years.

31. All notices, informations, declarations, certificates, requisitions, returns, and other documents required or authorised by this Act to be delivered, sent, or given to the Registrar General, a superintendent registrar, or a registrar, or by a registrar to a person who is required to give information concerning any birth or death, or who gives notice of any death, may be sent by post in a prepaid letter, and the date at which they would be delivered to the person to whom they are sent in the ordinary course of post shall be deemed to be the date at which they are received; and in proving such sending it shall be sufficient to prove that the letter was prepaid, properly addressed, and put into the post.

32. In the principal Act and this Act—

The term "general search" shall mean a search during any number of successive hours not exceeding six, without stating the object of the search; and

The term "particular search" shall mean a search over any period not exceeding five years for any given entry.

33. The forms in the First Schedule to this Act, or forms as nearly resembling the same as circumstances admit, shall be used in all cases in which they are applicable, and when so used shall be valid in law.

34. It shall be lawful for the Lord Lieutenant

or the Registrar General, with the consent of the Lord Lieutenant, by order, to alter from time to time all or any of the forms contained in the schedules to the principal Act and this Act, or in any order under this section, in such manner as may appear to them best for carrying into effect the principal Act, or to prescribe new forms for that purpose, and from time to time to make regulations for prescribing any matters authorised by this Act to be prescribed, and to revoke and alter such regulations.

Any order made in pursuance of this section shall be published in the Dublin Gazette, and shall be laid before both Houses of Parliament, if Parliament is sitting, within fourteen days after the issue of the same, or if Parliament is not then sitting, within fourteen days after the commencement of the then next session.

Every form when altered in pursuance of this section shall have the same effect as if it had been contained in a schedule to the principal Act or this Act, as the case may be, and every regulation made in pursuance of this section shall, while in force, have the same effect as if it were enacted in this Act.

35. All fines and forfeitures imposed by the principal Act and all penalties imposed by this Act may, unless otherwise directed, be recovered in a summary manner as laid down in section sixty-five of the principal Act; that is to say, with respect to the police district of Dublin metropolis, subject and according to the provisions of any Act regulating the powers and duties of justices of the peace for such district, or of the police of such district; and with respect to other parts of Ireland, before a justice or justices of the peace sitting in petty sessions, subject and according to the provisions of the Petty Sessions (Ireland) Act, 1851, and any Act amending the same.

36. A prosecution or indictment for an offence under this Act shall be commenced at any time within three years after the commission of such offence.

37. The particulars required to be registered concerning a birth or death shall be the particulars specified in the forms in Schedules A. and B. respectively to the principal Act.

38. In this Act, if not inconsistent with the context,—

The term "principal Act" means the Act of the session of the twenty-sixth year of the reign of Her Majesty, chapter eleven:

The term "public institution" means a prison, lock-up, workhouse, barracks, lunatic asylum, hospital, and any prescribed public, religious, or charitable institution:

The term "house" includes a public institution as above defined :

The term "occupier" includes the governor, keeper, master, matron, superintendent, or other chief resident officer of every public institution, and where a house is let in separate apartments or lodgings includes any person residing in such house who is the person under whom such lodgings or separate apartments are immediately held, or his agent, and by such term shall all the persons above mentioned be described when acting as informants :

The term "relative" includes a relative by marriage :

The term "prescribed" means prescribed by regulations made from time to time in pursuance of section eleven of the principal Act or of this Act :

The term "appointed fee" means the fee specified in the Second Schedule to this Act :

The term "guardians" includes any body of persons performing the functions of guardians within the meaning of the Acts relating to the relief of the poor.

39. Where reference is made in this Act to a registrar or superintendent registrar in connexion with any birth or death or other event, or any register, such reference shall (unless the contrary be expressed) be deemed to be made to the registrar who is the registrar for the district in which such birth or death or other event took place, or who keeps the register in which the birth or death or other event is or is required to be registered, or who keeps the register referred to, and to the superintendent registrar who superintends such registrar as aforesaid.

40. This Act shall not come into operation until the first day of January one thousand eight

hundred and eighty-one, which day is referred to in this Act as the commencement of this Act.

41. This Act, save as is herein otherwise expressly provided, shall extend only to Ireland.

42. This Act shall, so far as is consistent with the tenor thereof, be construed as one with so much as is unrepealed of the principal Act ; and that Act, together with this Act, may be cited as the Births and Deaths Registration Acts (Ireland), 1863 to 1880.

43. This Act may be cited as the Births and Deaths Registration Act (Ireland), 1880.

### Repeal.

44. The Act specified in the Fourth Schedule to this Act is hereby repealed, from and after the commencement of this Act, to the extent specified in the third column of that schedule.

Provided that this repeal shall not affect—

- (a.) Anything duly done or suffered under any enactment hereby repealed, or the proof of any past act or thing ; or,
- (b.) Any right, privilege, obligation, or liability acquired, accrued, or incurred under any enactment hereby repealed ; or
- (c.) Any penalty, forfeiture, or punishment incurred in respect of any offence committed against any enactment hereby repealed ; or,
- (d.) Any investigation, legal proceeding, or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture, or punishment as aforesaid : and any such investigation, legal proceeding, and remedy may be carried on as if this Act had not passed.

### SCHEDULES.

#### FIRST SCHEDULE.

##### FORM A.

##### FORM CERTIFYING NAME GIVEN IN BAPTISM.

I, \_\_\_\_\_, of \_\_\_\_\_, in the county of \_\_\_\_\_, do hereby certify that on the \_\_\_\_\_ 18\_\_\_\_ I baptized by the name of \_\_\_\_\_ a \_\_\_\_\_ male child produced to me by \_\_\_\_\_ as the \_\_\_\_\_ of \_\_\_\_\_, and declared by the said \_\_\_\_\_ to have been born at \_\_\_\_\_ in the county of \_\_\_\_\_ on the \_\_\_\_\_ 18\_\_\_\_.

Witness my hand this \_\_\_\_\_ 18\_\_\_\_.

##### FORM B.

Section 8.

##### FORM CERTIFYING NAME GIVEN *NOT* IN BAPTISM.

I, \_\_\_\_\_, do hereby certify that the \_\_\_\_\_ male child born on the \_\_\_\_\_, at \_\_\_\_\_ in the county of \_\_\_\_\_, to \_\_\_\_\_ and \_\_\_\_\_ his wife, and registered in the district of \_\_\_\_\_ on the \_\_\_\_\_ 18\_\_\_\_, has (without being baptized) received the name of \_\_\_\_\_.

Witness my hand this \_\_\_\_\_ 18\_\_\_\_.

} of \_\_\_\_\_

## FORM C.

## FORM FOR ALTERING NAME ENTERED IN REGISTER.

I, \_\_\_\_\_, do certify that the male child born on the \_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_\_, at \_\_\_\_\_ in the county of \_\_\_\_\_, to \_\_\_\_\_ and \_\_\_\_\_ his wife, and registered in the district of \_\_\_\_\_ on the day of \_\_\_\_\_ 18\_\_\_\_, has since had (*his or her*) name altered to \_\_\_\_\_.

Witness my hand this \_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_\_.

} of \_\_\_\_\_

## FORM D.

## Section 17. FORM CERTIFYING INFORMATION OF DEATH GIVEN TO REGISTRAR.

I certify that I have this \_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_\_, (*registered the death or received notice of the death*) of \_\_\_\_\_, said to have died the day of \_\_\_\_\_ 18\_\_\_\_ at \_\_\_\_\_.

Witness my hand this \_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_\_.

\_\_\_\_\_  
Registrar.  
District

The blanks and the words in italics to be filled in according to the facts.

## FORM E.

## Section 24. FORM CERTIFYING THAT BIRTH HAS BEEN REGISTERED.

I certify that I have this \_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_\_, registered the birth of \_\_\_\_\_, a (*male or female*) child, at entry No. \_\_\_\_\_, said to have been born at \_\_\_\_\_ on the day of \_\_\_\_\_ 18\_\_\_\_.

Witness my hand this \_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_\_.

\_\_\_\_\_  
Registrar.  
District

The blanks and words in italics to be filled in according to the facts.

## Section 23.

## SECOND SCHEDULE.

*Fees to Registrars and Superintendent Registrars.*

Upon the registration of a birth when the child is more than three months old, if it is not more than twelve months old, to the registrar (unless the delay is occasioned by his failure to issue a requisition, or otherwise by his default) two shillings and sixpence, and if it is more than twelve months old, and is registered with the

authority of the Registrar General, to registrar (unless the delay is occasioned by his failure to issue a requisition, or otherwise by his default) five shillings, to be paid by the informant or declarant.

Upon the registration of a death with the authority of the Registrar General after the expiration of twelve months, to the registrar (unless the delay is occasioned by his failure to issue a requisition, or otherwise by his default) five shillings, to be paid by the informant or declarant.

For taking, attesting, and transmitting a declaration made by an informant respecting a birth which occurred in another district, to the registrar attesting the declaration two shillings, to be paid by the informant.

For entering the baptismal or other name of child upon certificate produced after registry of birth, to superintendent registrar or registrar one shilling, to be paid by the person requiring the name to be entered.

Correction of error of fact or substance in register, to superintendent registrar or registrar two shillings and sixpence, to be paid by the person requiring the error to be corrected.

For every search, to the superintendent registrar, to be paid by the applicant for the search, if it is a general search, five shillings, if it is a particular search, one shilling.

For a certified copy of any entry given by the superintendent registrar, two shillings and sixpence to the superintendent registrar, to be paid by the applicant.

For every search, to the registrar, to be paid by the applicant for the search, one shilling.

For a certified copy of any entry given by the registrar, two shillings and sixpence to the registrar, to be paid by the applicant.

## THIRD SCHEDULE.

## FORM A.

Section 25.

## REGISTRATION OF BIRTHS AND DEATHS IN IRELAND.

*Declaration, in case of Registration of Birth, to be made by a qualified Informant before a Justice of the Peace.*

Superintendent Registrar's District,  
Registrar's District,

I, \_\_\_\_\_, being \_\_\_\_\_ of the child named \_\_\_\_\_, do solemnly and sincerely declare, according to the best of my knowledge and belief, that the said child was born on the day of \_\_\_\_\_ 18\_\_\_\_ at \_\_\_\_\_, and is of the sex, that the name and surname of the father of the said child are \_\_\_\_\_, and his dwelling place is \_\_\_\_\_, that the name and surname of the mother of the said child are \_\_\_\_\_, that her maiden surname is \_\_\_\_\_, and that the rank or

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profession of the father of the said child is that  
of

Signature of person making declaration,

Declared before me this day of

18 Justice of the Peace for the County of

N.B.—This declaration is to be made in all cases of birth registered after three months, and not after twelve months, following the birth.

FORM B.

REGISTRATION OF BIRTHS AND DEATHS IN IRELAND.

*Declaration, in case of Registration of Birth, to be made by a qualified Informant who has left the District in which a Birth occurred before it had been registered.*

Superintendent Registrar's District,\*

Registrar's District,\*

I, , formerly of , and now residing at , being of the child named , do solemnly and sincerely declare, according to the best of my knowledge and belief, that the said child was born on the day of 18 , at in the district of , and is of the sex, that the name and surname of the father of the said child are , and his dwelling place is , that the name and surname of the mother of the said child are , and that her maiden surname is , and that the rank or profession of the father of the said child is that of ; and I also solemnly and sincerely declare that, having left the district in which the above birth occurred, I am now desirous that it should be registered in accordance with the provisions of the sixth section of the Births and Deaths Registration Act (Ireland), 1880.

Signature of person making declaration,

Declared before me this day of

18

Registrar for the District of

This declaration is to be forwarded to the registrar of the district in which the birth took place by the registrar of the district before whom the declaration is made.

FORM C.

Section 27.

REGISTRATION OF BIRTHS AND DEATHS IN IRELAND.

*Statutory Declaration, in case of error of fact or substance in a Register of Births or Deaths, to be made by a qualified Informant before a Justice of the Peace.*

Superintendent Registrar's District,

Registrar's District,

I, , being of the person whose was entered on the day of 18 , at No. in the register of of the above district, do solemnly and sincerely declare, according to the best of my knowledge and belief, that it is erroneously stated that<sup>a</sup> , and that instead thereof it should be stated that<sup>b</sup>

<sup>a</sup> Here state the incorrect particulars as given in entry in registry.

<sup>b</sup> Here state the correct particulars which should be added to the entry.

Signature of party making declaration,

Declared before me this day of

18

Justice of the Peace for the County of

FORM D.

Section 27.

REGISTRATION OF BIRTHS AND DEATHS IN IRELAND.

*Certificate in case of error of fact or substance (other than an error relating to cause of Death) in a Coroner's Certificate concerning a dead body, to be signed by the Coroner.*

Superintendent Registrar's District,

Registrar's District,

I, , coroner for the county of , do hereby certify that in the certificate signed by me respecting the dead body of , of , on which an inquest was held on the day of 18 , it was incorrectly stated that<sup>a</sup> whereas it should have been stated that<sup>b</sup> as has been proved to my satisfaction by the

<sup>a</sup> Here state particulars as incorrectly given in the certificate of finding of jury.

<sup>b</sup> Here state the correct particulars which should be added to the entry.

Certified by me

Coroner for the County of

this day of 18

FOURTH SCHEDULE.

A description or citation of a portion of an Act is inclusive of the words, section, or other part first or last mentioned, or otherwise referred to as forming the beginning or as forming the end of the portion comprised in the description or citation.

Session and Chapter.	Title or abbreviated Title.	Extent of repeal.
26 Vict. c. 11. - -	An Act for the Registration of Births and Deaths in Ireland. (20th April 1863.)	Preliminary to Act, from the words "general search" to "stating objects of search." Section twenty-six, from the words "in case of the death" to end of section. Sections thirty-one, thirty-two, thirty-three, thirty-four, thirty-five, thirty-six, thirty-seven, thirty-eight, forty-four, forty-six, fifty-one, and fifty-five.

## CHAP. 14.

*Relief of Distress (Ireland) Amendment Act, 1850.*

## ABSTRACT OF THE ENACTMENTS.

1. *Short title.*
2. *Amendment of 43 Vict. c. 4.*
3. *Powers of Board of Works.*
4. *Terms upon which Commissioners may undertake works.*
5. *Power to undertake works.*
6. *Management and maintenance of works when constructed.*
7. *Amendment of terms of loans to boards of guardians.*
8. *Funds for preliminary expenses of loans.*
9. *Grant of out-door relief.*
10. *Definition of improvements under s. 4. of 33 & 34 Vict. c. 46.*
11. *Postponement of making special rate under 43 Vict. c. 1.*
12. *Guardians to be at liberty to sell seed sufficient for two acres.*
13. *Railway and other loans.*
14. *Guarantees by presentment sessions.*
15. *Supplementary provisions as to presentments.*
16. *Interpretation.*

## SCHEDULE.

An Act to amend the Relief of Distress (Ireland) Act, 1880; and for other purposes relating thereto.

(2nd August 1880.)

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as the Relief of Distress (Ireland) Amendment Act, 1880.

2. Whereas by the seventeenth section of the Relief of Distress (Ireland) Act, 1880, it is enacted

that the Commissioners of Church Temporalities in Ireland shall advance to the Commissioners of Public Works, out of any moneys at their disposal or which they may raise on the security of their annual income, such sum or sums not exceeding in the whole the sum of seven hundred and fifty thousand pounds as the Commissioners of the Treasury may from time to time direct, and whereas the said limited sum has been found insufficient for the purposes of the Act: And whereas it is desirable to enable the Commissioners of Public Works on the recommendation of the Local Government Board to advance moneys by way of grant to the board of guardians in any union authorised to give out-door relief under section three of the Relief of Distress

(Ireland) Act, 1880, subject to the restrictions and conditions herein-after set forth :

Therefore, the seventeenth section of the said Act shall be construed as if the words one million five hundred thousand pounds were therein substituted for the words seven hundred and fifty thousand pounds : And with the view of facilitating the raising of the said increased sum, the Commissioners for the Reduction of the National Debt and the Commissioners of Church Temporalities may from time to time vary the terms for the repayment of any loan made or to be made by the Commissioners for the Reduction of the National Debt, and the security for such loan : And the Treasury may, if they think fit, from time to time continue their guarantee to the loan and security varied as aforesaid.

The Commissioners of Public Works in Ireland may from time to time on the recommendation of the Local Government Board grant to the board of guardians in any union authorised to give out-door relief under the third section of the Relief of Distress (Ireland) Act, 1880, out of the said sum of one million five hundred thousand pounds, such moneys as the Local Government Board may find necessary, having regard to the financial condition of such union and the pressure of distress within its limits, to aid in giving out-door relief in such union : Provided that the entire sum to be so granted shall not exceed two hundred thousand pounds.

3. The Commissioners of Public Works may, if they think fit, from time to time, with the consent of the Treasury, out of any moneys placed at their disposal by Parliament for the making of loans or grants, apply such sums not exceeding in all the sum of forty-five thousand pounds as the Treasury may sanction for the purposes of the Fishery Piers Act, to be expended in the manner therein mentioned, but subject to the conditions of this Act.

Provided that the power conferred upon the Commissioners by this section shall only be exercised with reference to works for which an application by memorial under the Fishery Piers Act shall have been made before the passing of this Act or for which an application by memorial shall be made after the passing of this Act and before the thirtieth day of September one thousand eight hundred and eighty.

4. When any person interested in the execution of any work which might be executed under the Fishery Piers Act pays to the Commissioners of Public Works one-fourth part of the cost of such work as estimated by the Commissioners, they may, with the consent of the Treasury, publish in the Dublin Gazette or otherwise, as they shall think fit, a notice of their intention to undertake such work, which notice shall be instead of, and

shall have all the force and effect of the final notice mentioned in the sixteenth section of the Fishery Piers Act.

Before publishing such notice the Commissioners may, if they think fit, do any matter or thing, and shall have and may if they think fit exercise any right, power, or authority in connexion with such work, which they might do or would have with reference to any of the proceedings preliminary to the publication of the final notice mentioned in the Fishery Piers Act if the work were undertaken in strict compliance with the said Act.

The provisions contained in the following sections of the Fishery Piers Act, that is to say, section four, sub-section four, section five, and sections ten to fifteen, both included, relative to proceedings preliminary to the publication of such notice, shall not apply to any such work.

5. At any time after the publication by the Commissioners of Public Works of any such notice as is mentioned in this Act the Commissioners may commence and proceed with the works proposed to be executed and to which such notice relates.

The Commissioners may, if they think fit, do any matter or thing, and shall have and may if they think fit exercise any right, power, or authority with reference to such work, which they might do or would have if the work were undertaken in strict compliance with the Fishery Piers Act, and all the enactments contained in that Act, save so far as they are modified by this Act, shall apply as nearly as may be with reference to any such work.

6. When such work has been constructed, all the provisions of the Fishery Piers Act and of the Act of the session of Parliament held in the sixteenth and seventeenth years of the reign of Her present Majesty, chapter one hundred and thirty-six, as amended by any Act or Acts, shall apply to such work as if it was a pier constructed in strict compliance with the Fishery Piers Act.

7. The fourth and fifth sections of the Relief of Distress (Ireland) Act, 1880, shall be amended as follows ; (that is to say,)

(1.) The term for which money may be borrowed by the board of guardians of any union authorised to give out-door relief under the third section of the Relief of Distress (Ireland) Act, 1880, shall be extended to twelve years. The rate of interest at which the Commissioners of Public Works may lend to any such board of guardians shall be reduced to one per centum per annum ; and, in the case of any loan by the Commissioners of Public Works to any

such board of guardians, the payment of the first instalment payable in respect of such loan may, with the consent of the Treasury, be postponed for any period not exceeding two years from the making of the loan, and no interest shall be charged on such loan during any such period of postponement of payment of the first instalment.

(2.) The board of guardians of any union authorised as aforesaid, and which has contracted any loan for the purpose of giving out-door relief under the provisions of the said Act, may borrow money under the provisions of this section to pay off such loan :

(3.) So much as may be necessary of the said sum of one million five hundred thousand pounds payable by the Commissioners of Church Temporalities to the Commissioners of Public Works shall be applied by the Commissioners of Public Works in making good any advance by way of loan which they may make to a board of guardians under the authority of the Relief of Distress (Ireland) Act, 1880, as amended by this Act.

The provisions of the nineteenth section of the Relief of Distress (Ireland) Act, 1880, shall apply to the repayment of all amounts advanced as last aforesaid by way of loan to board of guardians as fully as if such advances had been specified in that section.

8. In addition to the sum of five thousand pounds which it is provided by the fifteenth section of the Act of the session of Parliament held in the tenth and eleventh years of the reign of Her present Majesty, chapter thirty-two, may be advanced by the Treasury to the Commissioners of Public Works in any one year, to be applied by them in making the necessary survey, inspection, and investigation, and in taking all other proceedings preliminary to making any loan or advance as therein mentioned, the Commissioners of Public Works may, at any time before the thirty-first day of March next after the passing of this Act, with the consent of the Treasury, out of any moneys placed at their disposal by Parliament for the making of loans, apply the further sum of five thousand pounds, or such other sum as the Treasury may from time to time deem necessary, for defraying the expenses mentioned in the said section.

9. The Local Government Board shall, up to the first day of March one thousand eight hundred and eighty-one, be entitled to authorise the grant of out-door relief in food and fuel, or either, by order for the time and subject to the

power of revocation stated in section three of the Relief of Distress (Ireland) Act, 1880, and the said section three shall be read and construed in all respects as if the said first day of March one thousand eight hundred and eighty-one had been there inserted instead of the thirty-first day of December one thousand eight hundred and eighty.

10. Whenever by any award or otherwise the rent of any tenant shall be increased by reason or in respect of any works executed on his holding under the Relief of Distress (Ireland) Act, 1880, then, and in every such case, the works so executed shall, so far as such increase of rent shall exceed the rate of two and a half per centum per annum interest on the capital expended in the execution of the said works, and shall be paid by such tenant or his successor in title, be deemed to be improvements made by such tenant within the meaning of the fourth section of the Landlord and Tenant (Ireland) Act, 1870.

But the court in awarding compensation, if any, to such tenant in respect of such improvements shall, in reduction of the claim of the tenant, take into consideration the time during which such tenant may have enjoyed the advantage of such improvements, also the rent at which such holding has been held, and any benefits which such tenant may have received from his landlord in consideration, expressly or impliedly, of the improvements so made.

11. At any time before the making by the board of guardians of any union of either of the special rates which the guardians are authorised to make under the provisions of the seventh section of the Seed Supply (Ireland) Act, 1880, the Local Government Board, if satisfied by the representations made to them by the board of guardians or otherwise that it is expedient and necessary to do so, may, by order, authorise, or, if they think fit, may require the board of guardians to postpone the making of such rate for one year, and the board of guardians shall postpone the making of such rate accordingly.

Such order may be made with reference to the whole of any union, or with reference to any electoral division in the union.

Whenever any such postponement of the making of a special rate takes place in any union or electoral division, the payment of the amount of the instalment due in respect of the loan to such union or electoral division, and payable by the board of guardians of the union to the Commissioners of Public Works next after the issuing of such order, in accordance with the provisions of the fourth section of the said Act, shall likewise be postponed for the period of one year.

12. In case where the guardians of any union

shall have sold to the occupier of any land valued at not more than fifteen pounds a quantity of seed potatoes or other seeds sufficient to sow two acres of land statute measure, and that the total cost of such seed shall not have exceeded the sum of five pounds, the Local Government Board may, if they think fit, sanction the payment by the Board of Public Works of the seed so sold as aforesaid, notwithstanding the provisions of the sixth section of the Seeds Supply Act, 1880.

13. The Commissioners of Public Works may, if they think fit, with the consent of the Treasury, out of any moneys placed at their disposal by Parliament for the making of loans, make loans to railway and other public companies, to the trustees of canal and river navigations, and to harbour commissioners, now or hereafter to be incorporated or constituted as the case may be, having borrowing powers, and in favour of which any such guarantee as is herein-after mentioned has been given; and also to the trustees of drainage districts appointed and constituted under the provisions of the Act of the fifth and sixth years of Her present Majesty, chapter eighty-nine, and the Acts amending the same; at such rate of interest as the Treasury have fixed for loans to which section two of the Public Works Loans Act, 1879, applies, or may from time to time fix in pursuance of that section, and otherwise upon the same terms and conditions as apply to loans made by the said Commissioners for the like purposes under the Act of the session of Parliament of the first and second years of the reign of His late Majesty King William the Fourth, chapter thirty-three, entitled "An Act for the Extension and Promotion of Public Works in Ireland," and the Acts amending the same: Provided, that no loan under this section and the following section shall be made to any railway company or tramway company, or to the trustees of any canal and river navigation, other than those mentioned in the schedule to this Act.

14. For the purpose of enabling any barony or baronies to give a guarantee in favour of any such railway or other public company, or trustees of any canal or river navigation, the Lord Lieutenant may, from time to time, if he thinks fit, in exercise of the power conferred upon him by the Relief of Distress (Ireland) Act, 1880, convene extraordinary presentment sessions for any barony, and may, by instructions to the justices and the associated cesspayers assembled at such sessions, authorize and empower them by presentment to charge the barony, by way of guarantee, with the repayment of any principal sum, with interest, thereafter to be borrowed by any such company or trustees, upon such conditions as the Lord Lieutenant, with the consent of the Treasury, may prescribe.

The baronial presentment sessions may agree with the company or trustees as to the mode in which the company or trustees contracting the loan shall repay or secure to the barony any sums paid by the barony on account of such loan, with interest thereon.

Such security may be taken on behalf of the barony by the secretary of the grand jury of the county.

For the purpose of taking such security, the person holding the office of secretary of the grand jury of the county shall be a corporation sole, and shall have perpetual succession, with a capacity to acquire and hold lands, Government securities, shares in any public company, securities, for money, and real and personal property of every description, to sue and be sued, using an official seal, to enter into engagements binding on himself and his successors in office, and to do all other acts necessary or expedient to be done in the execution of this Act.

Provision may be made by the Lord Lieutenant, with the consent of the Treasury, in any such instructions for all matters and things, whether of the same nature as those above mentioned or different, which appear to the Lord Lieutenant to be necessary or expedient for the purposes of such presentments.

So much of the provisions of the eleventh section of the Relief of Distress (Ireland) Act, 1880, as relates to the powers of the Lord Lieutenant, and to the instructions issued by him, and also the provisions of the twelfth, fourteenth, fifteenth, and sixteenth sections of the said Act, shall apply to all presentments made at any extraordinary presentment sessions convened in accordance with this Act.

For the purposes of this section only, the power of convening extraordinary meetings of the baronial presentment sessions of any barony vested in the Lord Lieutenant may be exercised by the Lord Lieutenant at any time before the thirty-first day of December one thousand eight hundred and eighty-one.

15. The Commissioners of Public Works, shall, from time to time, for the purpose of enforcing any presentment made by the baronial presentment sessions of any barony charging the barony with any sum according to the provisions of this Act, make out, before each assizes, a certificate for each county in which such presentment has been made, specifying the amount then properly chargeable upon the barony under such presentment, and shall transmit the certificate to the secretary of the grand jury, to be laid before the grand jury, and thereupon the grand jury shall, without any previous application to presentment sessions, make a presentment for the amount specified in such certificate as payable by such barony, or, in default of such presentment, the amount shall be raised

off the barony by an order of the judge of assize, which order shall have the force of a presentment. The amounts raised under such presentments shall be paid to the Commissioners of Public Works in such manner as the Treasury shall direct.

16. In this Act the term "the Fishery Piers Act" means the Act passed in the session of Parliament held in the ninth and tenth years of

the reign of Her present Majesty, chapter three, as altered or amended by any Act or Acts.

The term "Commissioners of Public Works" means the Commissioners of Public Works in Ireland.

The term "the Lord Lieutenant" means the Lord Lieutenant or other Chief Governor or Governors of Ireland for the time being.

The term "the Treasury" means the Commissioners of Her Majesty's Treasury.

#### SCHEDULE.

1. Railway or tramway from Kilrush to Kilkee.
2. Railway or tramway from Ennis to Kilrush, via Kildysart.
3. Railway or tramway from Killaloe to Scariff.
4. Railway or tramway from Ennis to Ennistymon, and Miltown Malbay.
5. Railway from Loughrea to Attymon or its vicinity.
6. Railway from Tuam to Claremorris.
7. Railway or tramway from Galway to Clifden, or Galway to Oughterard.
8. Railway or tramway from Youghal to Cappa.
9. Railway from Macroom to Kenmare.
10. Railway from Bandon to Clonakilty.
11. Railway from Cork to Fermoy and Mitchellstown.
12. Railway from Mohill to Dromod.
13. Letterkenny Railway.
14. Stranorlar and Donegal Railway.
15. Donegal and Castle Caldwell Railway.
16. Ballymena and Portglenone Railway.
17. Clara and Banagher Railway.
18. Ennis and West Clare Railway.
19. Cork and Macroom Railway.
20. Killorglin Railway in Kerry.
21. Loughrea and Craughwell Railway.
22. Railway or tramway from Bundoran to Sligo.
23. Railway or tramway from Ennis to Tulla and Scariff.
24. Railway from Belturbet Junction, via Belturbet, Ballyconnell, and Ballinamore to Dromod.
25. Railway from Oldcastle to Kilnaleck.
26. Railway from Portumna to Loughrea.
27. Railway from Nenagh to Thurles.
28. Railway from Cashel to Slievardagh.
29. Ballinamore and Ballyconnell Canal.
30. Railway from Ardee to junction with Great Northern Railway at or near Blackmills, county Louth.
31. Railway or tramway from Port Oriel, Clogherhead, to junction with Great Northern Railway at or near the Cross of Grange, county Louth.
32. Railway from, at, or near Kingscourt to Carrickmacross, in the county of Monaghan.
33. Railway or tramway from Inniskeen to Carrickmacross, in the county of Monaghan.
34. Tramway from Bray to Enniskerry, in the county of Wicklow.
35. Tramway between railway station Kanturk and Newmarket, county Cork.
36. Railway from Swineford to Ballaghaderreen, county Mayo.
37. Tramway from Youghal to Cappagh.
38. Causeway and toll bridge connecting Cunnigar with Dungarvan.
39. Railway or tramway from Cashel to Farnaleen.
40. Railway from Headford to Kenmare.
41. Railway from Ballina to Ballisodare, county Sligo.
42. Railway from Laffansbridge to Cashel.
43. Railway or tramway from Rhode to Edenderry.

## CHAP. 15.

*Industrial Schools Acts Amendment Act, 1880.*

## ABSTRACT OF THE ENACTMENTS.

1. *Extension of 29 & 30 Vict. c. 118. s. 14. and 31 & 32 Vict. c. 25. s. 11, to other descriptions of children.*
2. *Short title.*

An Act further to amend the Industrial Schools Act, 1866, and the Industrial Schools Act (Ireland), 1868.

(2nd August 1880.)

WHEREAS it is expedient that children who are growing up in the society of depraved and disorderly persons should be withdrawn from contaminating influences, and that the benefits of industrial school training should be extended to them :

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. Section fourteen of the Industrial Schools Act, 1866, and section eleven of the Industrial Schools Act (Ireland), 1868, shall be respectively read and construed as if, after the four several descriptions therein respectively contained, there were added the following descriptions, namely,—

That is lodging, living, or residing with common or reputed prostitutes, or in a house resided in or frequented by prostitutes for the purpose of prostitution :

That frequents the company of prostitutes.

2. This Act may be cited for all purposes as the Industrial Schools Acts Amendment Act, 1880.

## CHAP. 16.

*Merchant Seamen (Payment of Wages and Rating) Act, 1880.*

## ABSTRACT OF THE ENACTMENTS.

1. *Short title and construction.*
2. *Conditional advance notes illegal.*
3. *Amendment of 17 & 18 Vict. c. 104., s. 169, as to allotment notes.*
4. *Rules as to payment of wages.*
5. *Penalty for being on board ship without permission before seamen leave.*
6. *Provisions contained in section five to apply to ships belonging to foreign countries in certain cases.*
7. *Rating of seamen.*
8. *Power of court to rescind contract between owner or master and seaman or apprentice.*
9. *Licensing of seamen's lodging-houses.*
10. *Desertion and absence without leave.*
11. *Extension to seamen of 38 & 39 Vict. c. 90.*
12. *Repeal of enactments in second schedule.*

## SCHEDULES.

An Act to amend the Law relating to the Payment of Wages and Rating of Merchant Seamen.

(2nd August 1880.)

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons,

in this present Parliament assembled, and by the authority of the same, as follows ; (that is to say,)

1. This Act may be cited as the Merchant Seamen (Payment of Wages and Rating) Act, 1880.

This Act shall be construed as one with the Merchant Shipping Acts, 1854 to 1876, and

those Acts and this Act may be cited collectively as the Merchant Shipping Acts, 1854 to 1880.

2. (1.) After the first day of August one thousand eight hundred and eighty-one, any document authorising or promising, or purporting to authorise or promise, the future payment of money on account of a seaman's wages conditionally on his going to sea from any port in the United Kingdom, and made before those wages have been earned, shall be void.

(2.) No money paid in satisfaction or in respect of any such document shall be deducted from a seaman's wages, and no person shall have any right of action, suit, or set-off against the seaman or his assignee in respect of any money so paid or purporting to have been so paid.

(3.) Nothing in this section shall affect any allotment note made under the Merchant Shipping Act, 1854.

3. (1.) Every agreement with a seaman which is required by the Merchant Shipping Act, 1854, to be made in the form sanctioned by the Board of Trade shall, if the seaman so require, stipulate for the allotment of any part not exceeding one half of the wages of the seaman in favour of one or more of the persons mentioned in section one hundred and sixty-nine of the Merchant Shipping Act, 1854, as amended by this section.

(2.) The allotment may also be made in favour of a savings bank, and in that case shall be in favour of such persons and carried into effect in such manner as may be for the time being directed by regulations of the Board of Trade, and section one hundred and sixty-nine of the Merchant Shipping Act, 1854, shall be construed as if the said persons were named therein.

(3.) The sum received in pursuance of such allotment by a savings bank shall be paid out only on an application made, through a superintendent of a mercantile marine office or the Board of Trade, by the seaman himself, or, in case of death, by some person to whom the same might be paid under section one hundred and ninety-nine of the Merchant Shipping Act, 1854.

(4.) A payment under an allotment note shall begin at the expiration of one month, or, if the allotment is in favour of a savings bank, of three months, from the date of the agreement, or at such later date as may be fixed by the agreement, and shall be paid at the expiration of every subsequent month, or of such other periods as may be fixed by the agreement, and shall be paid only in respect of wages earned before the date of payment.

(5.) For the purposes of this section "savings bank" means a savings bank established under one of the Acts mentioned in the first schedule to this Act.

4. In the case of foreign-going ships—

(1.) The owner or master of the ship shall pay to each seaman on account, at the time when he lawfully leaves the ship at the end of his engagement, two pounds, or one fourth of the balance due to him, whichever is least; and shall pay him the remainder of his wages within two clear days (exclusive of any Sunday, Fast Day in Scotland, or Bank Holiday) after he so leaves the ship.

(2.) The master of the ship may deliver the account of wages mentioned in section one hundred and seventy-one of the Merchant Shipping Act, 1854, to the seaman himself at or before the time when he leaves the ship instead of delivering it to a superintendent of a mercantile marine office.

(3.) If the seaman consents, the final settlement of his wages may be left to the superintendent of a mercantile marine office under regulations to be made by the Board of Trade, and the receipt of the superintendent shall in that case operate as a release by the seaman under section one hundred and seventy-five of the Merchant Shipping Act, 1854.

(4.) In the event of the seaman's wages or any part thereof not being paid or settled as in this section mentioned, then, unless the delay is due to the act or default of the seaman, or to any reasonable dispute as to liability, or to any other cause not being the act or default of the owner or master, the seaman's wages shall continue to run and be payable until the time of the final settlement thereof.

(5.) Where a question as to wages is raised before the superintendent of a mercantile marine office between the master or owner of a ship, and a seaman or apprentice, if the amount in question does not exceed five pounds, the superintendent may adjudicate, and the decision of the superintendent in the matter shall be final; but if the superintendent is of opinion that the question is one which ought to be decided by a court of law he may refuse to decide it.

5. Where a ship is about to arrive, is arriving, or has arrived at the end of her voyage, every person, not being in Her Majesty's service or not being duly authorised by law for the purpose, who—

(a.) goes on board the ship, without the permission of the master, before the seamen lawfully leave the ship at the end of their engagement, or are discharged (whichever last happens); or,

(b.) being on board the ship, remains there after being warned to leave by the master, or by a police officer, or by any officer of the Board of Trade or of the Customs,

shall for every such offence be liable on summary

conviction to a fine not exceeding twenty pounds, or, at the discretion of the court, to imprisonment for any term not exceeding six months; and the master of the ship or any officer of the Board of Trade may take him into custody, and deliver him up forthwith to a constable to be taken before a court or magistrate capable of taking cognizance of the offence, and dealt with according to law.

6. Whenever it is made to appear to Her Majesty—

- (1.) That the Government of any foreign country has provided that unauthorised persons going on board of British ships which are about to arrive or have arrived within its territorial jurisdiction shall be subject to provisions similar to the provisions contained in the last preceding section as applicable to persons going on board British ships at the end of their voyages; and
- (2.) That the Government of such foreign country is desirous that the provisions of the said section shall apply to unauthorised persons going on board of ships belonging to such foreign country within the limits of British territorial jurisdiction;

Her Majesty may, by Order in Council, declare that the provisions of the said last preceding section shall apply to the ships of such country; and thereupon so long as the Order remains in force those provisions shall apply and have effect as if the ships of such country were British ships arriving, about to arrive, or which had arrived at the end of their voyage.

7. A seaman shall not be entitled to the rating of A.B., that is to say, of an able-bodied seaman, unless he has served at sea for four years before the mast, but the employment of fishermen in registered decked fishing vessels shall only count as sea service up to the period of three years of such employment; and the rating of A.B. shall only be granted after at least one year's sea service in a trading vessel in addition to three or more years sea service on board of registered decked fishing vessels.

Such service may be proved by certificates of discharge, by a certificate of service from the Registrar General of Shipping and Seamen (which certificate the Registrar shall grant on payment of a fee not exceeding sixpence), and in which shall be specified whether the service was rendered in whole or in part in steam ship or in sailing ship, or by other satisfactory proof.

Nothing in this section shall affect a seaman who has been rated and has served as A.B. before the passing of this Act.

8. Where a proceeding is instituted in or before any court in relation to any dispute between an owner or master of a ship and a seaman or apprentice to the sea service, arising out of or incidental to their relation as such, or is instituted for the purpose of this section, the court, if, having regard to all the circumstances of the case, they think it just so to do, may rescind any contract between the owner or master and the seaman or apprentice, or any contract of apprenticeship, upon such terms as the court may think just, and this power shall be in addition to any other jurisdiction which the court can exercise independently of this section.

For the purposes of this section the term "court" includes any magistrate or justice having jurisdiction in the matter to which the proceeding relates.

9. It shall be lawful for the sanitary authority of any seaport town to pass byelaws for the licensing of seamen's lodging-houses, for the periodical inspection of the same, for the granting to the persons to whom such licenses are given, the authority to designate their houses as seamen's licensed lodging-houses, and for prescribing the penalties for the breach of the provisions of the byelaws: Provided always, that no such byelaws shall take effect till they have received the approval of the Board of Trade.

10. The following provisions shall from the commencement of this Act have operation within the United Kingdom:

A seaman or apprentice to the sea service shall not be liable to imprisonment for deserting or for neglecting or refusing without reasonable cause to join his ship or to proceed to sea in his ship, or for absence without leave at any time within twenty-four hours of his ship's sailing from any port, or for absence at any time without leave and without sufficient reason from his ship or from his duty.

Whenever either at the commencement or during the progress of any voyage any seaman or apprentice neglects or refuses to join or deserts from or refuses to proceed to sea in any ship in which he is duly engaged to serve, or is found otherwise absenting himself therefrom without leave, the master or any mate, or the owner, ship's husband, or consignee may, with or without the assistance of the local police officers or constables, who are hereby directed to give the same, if required, convey him on board: Provided that if the seaman or apprentice so requires he shall first be taken before some court capable of taking cognizance of the matters to be dealt with according to law; and that if it appears to the court before which the case is brought that the seaman or apprentice has been conveyed on board or taken before the court on improper or

insufficient grounds, the master, mate, owner, ship's husband, or consignee, as the case may be, shall incur a penalty not exceeding twenty pounds, but such penalty, if inflicted, shall be a bar to any action for false imprisonment.

If a seaman or apprentice to the sea service intends to absent himself from his ship or his duty, he may give notice of his intention, either to the owner or to the master of the ship, not less than forty-eight hours before the time at which he ought to be on board his ship; and in the event of such notice being given, the court shall not exercise any of the powers conferred on it by section two hundred and forty-seven of the Merchant Shipping Act, 1854.

Subject to the foregoing provision of this section, the powers conferred by section two hundred and forty-seven of the Merchant Shipping Act, 1854, may be exercised, notwithstanding the abolition of imprisonment for desertion and similar offences, and of apprehension without warrant.

Nothing in this section shall affect section two hundred and thirty-nine of the Merchant Shipping Act, 1854.

11. The thirteenth section of the Employers and Workmen Act, 1875, shall be repealed in so far as it operates to exclude seamen and apprentices to the sea service from the said Act, and the said Act shall apply to seamen and apprentices to the sea service accordingly; but such repeal shall not, in the absence of any enactment to the contrary, extend to or affect any provision contained

in any other Act of Parliament passed, or to be passed, whereby workman is defined by reference to the persons to whom the Employers and Workmen Act, 1875, applies.

12. The enactments described in the second schedule to this Act shall be repealed as from the commencement of this Act within the United Kingdom.

Provided that this repeal shall not affect—

- (1.) Anything duly done or suffered before the commencement of this Act under any enactment hereby repealed; or
- (2.) Any right or privilege acquired or any liability incurred before the commencement of this Act, under any enactment hereby repealed; or
- (3.) Any imprisonment, fine, or forfeiture, or other punishment incurred or to be incurred, in respect of any offence committed before the commencement of this Act, under any enactment hereby repealed; or
- (4.) The institution or prosecution to its termination of any investigation or legal proceeding, or any other remedy for prosecuting any such offence, or ascertaining, enforcing, or recovering any such liability, imprisonment, fine, forfeiture, or punishment as aforesaid, and any such investigation, legal proceeding, and remedy may be carried on as if this repeal had not been enacted.

#### SCHEDULES.

##### FIRST SCHEDULE.

Chapter.	Savings Bank.
24 & 25 Vict. c. 14.	- - - Post Office Savings Banks.
26 & 27 Vict. c. 87.	- - - } Trustee Savings Banks.
17 & 18 Vict. c. 104. s. 180.	- - - } Seamen's Savings Banks.
19 & 20 Vict. c. 41.	- - -

##### SECOND SCHEDULE.

(17 & 18 Vict. c. 104. in part.)

The Merchant Shipping Act, 1854,  
in part: namely,

In section two hundred and forty-three, sub-section (1), the words "to imprisonment for any period not exceeding twelve weeks with or without hard labour; and also."

In section two hundred and forty-three, sub-section (2), the words "to imprisonment for any period not exceeding ten weeks with or without hard labour, and also at the discretion of the court."

Section two hundred and forty-six.

In section two hundred and forty-seven the words "instead of committing the offender to prison;"  
And section two hundred and forty-eight.

## CHAP. 17.

*Revenue Offices (Scotland) Holidays Act, 1880.*

## ABSTRACT OF THE ENACTMENTS.

1. *Holidays to be kept in Customs and Inland Revenue Offices in Scotland.*
2. *Short title.*

An Act to make provision for Holidays in the Customs and Inland Revenue Offices in Scotland.

(2nd August 1880.)

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

several days, each and every of them, mentioned in the schedule to this Act shall, subject to the provisions of sections four and five of the Bank Holidays Act, 1871, be kept as public holidays in the Customs and Inland Revenue Offices in Scotland, and the anniversary of the coronation of Her Majesty and her successors and the birthday of the Prince of Wales shall no longer be kept as holidays in any Inland Revenue Office in Scotland.

1. From and after the passing of this Act, the
2. This Act may be cited as the Revenue Offices (Scotland) Holidays Act, 1880.

## SCHEDULE.

*Revenue Offices Holidays in Scotland.*

NEW YEAR'S DAY,  
CHRISTMAS DAY.

If either of the above days falls on a Sunday the following Monday shall be a holiday.

GOOD FRIDAY.

HER MAJESTY'S BIRTHDAY.

THE FIRST MONDAY IN MAY.

THE FIRST MONDAY IN AUGUST.

## CHAP. 18.

*Merchant Shipping Act (1854) Amendment Act, 1880.*

## ABSTRACT OF THE ENACTMENTS.

1. *Short title.*
2. *Amendment of s. 37 of 17 & 18 Vict. c. 104. as to numbers of joint owners of ships.*

An Act to amend the Merchant Shipping Act, 1854. (2nd August 1880.)

WHEREAS it is expedient to amend the Merchant Shipping Act, 1854 :

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. This Act may be cited as the Merchant Shipping Act (1854) Amendment Act, 1880.

2. Sub-section two of section thirty-seven of the recited Act is hereby repealed, and in place thereof it is enacted that the following words shall be deemed and be taken to be the second sub-section of the thirty-seventh section of the recited Act, and the recited Act shall be read and construed as if the second sub-section of the

thirty-seventh section thereof had been originally expressed in the following words; videlicet,

Subject to the provisions with respect to joint owners or owners by transmission herein-after contained, not more than sixty-four individuals

shall be entitled to be registered at the same time as owners of any one ship; but this rule shall not affect the beneficial title of any number of persons of any company represented by or claiming under or through any registered owner or joint owner.

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CHAP. 19.

*Taxes Management Act, 1880.*

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ABSTRACT OF THE ENACTMENTS.

PART I.

PRELIMINARY.

1. *Short title.*
2. *Division of Act into parts.*
3. *Commencement of Act.*
4. *Repeal.*
5. *Interpretation and construction.*
6. *Savings for Local Acts.*
7. *Substitution in former Acts.*
8. *Savings of Special Commissioners powers.*
9. *Savings of powers contained in former Acts.*
10. *High Court.*

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PART II.

GENERAL.

11. *Extent of part.*

*Board.*

12. *Board.*
13. *Officers to obey directions of the Board.*
14. *Moneys to be paid into the Exchequer.*

*Forms.*

15. *Forms in Second Schedule. The forms used to be those prescribed by the Board. Books of receipts. Material of schedules, duplicates, &c. Proceedings not void for want of form or mistake.*
16. *Delivery of forms. Service of notices.*

*Surveyors.*

17. *Treasury may appoint officers for survey and inspection; and may pay incidental charges.*
18. *Vexatious charges.*

*Actions against Commissioners and Officers.*

19. *Liability to penalties.*
20. *Limitation of actions. Defendant may tender amends. Actions against collectors. Costs to be defrayed by assessment.*

*Penalties.*

21. *Penalties, how recoverable. Mode of proceeding before Commissioners. Power to mitigate. Adjudication final. All penalties to be paid into Revenue.*

*Execution of Warrants.*

22. *Constables and peace officers to assist.*

*Obstruction.*

23. *Persons obstructing officers to forfeit 50l.*

*Administration of Oaths in Ireland.*

24. *Justices in Ireland may administer oaths.*
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## PART III.

## COMMISSIONERS, CLERK, AND ASSESSOR.

25. *Extent of Part.**Meetings.*

26. *Commissioners to meet from time to time. May meet within an adjoining place of exclusive jurisdiction.*

*Commissioners.*

27. *Commissioners for house duties. Sheriff ex-officio Commissioner.*

28. *Increase of General Commissioners.*

29. *Execution of Acts valid though not within prescribed times.*

30. *Commissioners in same county may allow assessments.*

31. *Execution of warrants.*

32. *Administration of oaths.*

33. *Books of assessments the property of the Commissioners.*

34. *Delivery of books or papers.*

35. *Commissioners concerned to have no voice in controversies.*

*Transfers of Parishes.*

36. *Commissioners may transfer jurisdictions or create new divisions. Proviso.*

*Union of Parishes.*

37. *Parishes may be united. United parishes may be disunited.*

*Poor Law Parishes.*

38. *Parishes formed for poor law purposes may be made parishes for the purposes of the duties.*

*Parochial Books.*

39. *Inspection of parish books. Penalty for refusal.*

*Exemption from Juries.*

40. *Exemption of Commissioners from serving on juries.*

*Clerk.*

41. *Appointment of clerk. Remuneration. Delay of clerk or assistant. Clerk not to take fees. Land tax clerk. Vacancy in office of clerk.*

*Assessors.*

42. *Appointment of assessors. Justices may appoint.*

43. *In certain cases surveyor to act. Metropolis.*

44. *Exemption.*

45. *Declaration of office.*

*Penalties on Assessors.*

46. *For neglect to attend. Or refusal. Neglect of duty. Where appointed by the justices.*

47. *Poundage.*

## PART IV.

## ASSESSMENT.

*Year.*

48. *Year.*

*Assessors Certificates.*

49. *Delivery of assessments.*

50. *Estimates in default of returns.*

*Examination of Assessments.*

51. *Surveyors to examine assessments and returns.*

*Amendment of Assessments.*

52. *May amend assessments.*

*Place of Assessment.*

53. *Parish in two counties. Houses in two parishes. Board to direct where assessments to be made.*

54. *Doubts as to parish to which lands belong.*

*Errors.*

55. *Errors of description.*

*Allowance of Assessments.*

56. *Allowance of assessments.*

*Appeals.*

57. *Notice of appeal meetings to be given. House duty appeals. Persons aggrieved may appeal. Assessments not to be altered before appeals except in cases authorized. Proof of overcharge. Surveyor may attend and produce evidence. Person not fully assessed may be charged. No barrister, &c. to plead. Determination final, except where cases are required for High Court.*

58. *Charges not to be made in certain cases.*

*Cases for Opinion of High Court.*

59. *Commissioners may be required to state a case for opinion of High Court.*

*Double Assessments.*

60. *Relief to persons doubly charged.*

*Books of Assessments.*

61. *Books of assessment. Account of totals.*

*Changes.*

62. *Surveyor to certify changes, and Commissioners to apportion and adjust the assessment.*

*Omissions from First Assessments.*

63. *Charges may be made in cases of omissions. Notice to persons charged. Proof of notice. Time limit. Delivery.*

*Amended Return.*

64. *Person surcharged may make amended return. Declaration. Objections to amended return. Satisfaction therewith.*

65. *Time limit.*

66. *False declaration. Indictment.*

*Appeals against Surcharges.*

67. *Appeals against surcharges.*

68. *Treble duty.*

*Supplementary Assessments.*

69. *Supplementary assessments.*

*Charge Duplicates.*

70. *Duplicates showing amount of assessments to be made out. Contents. Penalty.*

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## PART V.

### APPOINTMENT OF COLLECTORS [ENGLAND].

71. *Extent of Part.*

*Grouping of Parishes.*

72. *Collecting groups.*

*Nomination.*

73. *Nomination of collectors. Office not compulsory. Penalty in default of notice.*

*Security to the Crown.*

74. *Board may require security.*

*Appointment by Board.*

75. *In default of security being given Board may appoint.*

76. *Security. Conditions of bond.*

*Security to the Commissioners.*

77. *Commissioners, inhabitants, &c. may require security.*

*Exemption from Stamp Duty.*

78. *Bonds free from stamp duty.*

*Liability of Parishes.*

79. *Parish not liable for default where Board take security. In other case parish liable. Arrears to be re-assessed.*

*Poundage.*

80. *Poundage to collectors.*

*Appointment of Collectors (Scotland).*

81. *Treasury to appoint. Allowances. Security. No liability to re-assessment. Return to Parliament. Interpretation. Savings.*

PART VI.

COLLECTION.

*Time for Payment.*

82. *Duties when due. Duties assessed after 1st January.*

*Collectors Duplicates.*

83. *Clerk to prepare duplicates. Delivery to collectors and surveyor.*

*Additional First Assessment.*

84. *Cases not then determined to be added to first assessments.*

*Demand.*

85. *Collectors to demand duties. To give receipts.*

*Recovery.*

86. *Collectors on payment of duty being refused to distrain. May under warrant break open houses. Levy. Powers of 33 Geo. 3. c. 55. may be used in recovery of arrears.*

87. *Collectors advancing duties may levy the sum paid.*

88. *No goods to be taken except at the suit of landlord for rent unless partly pay arrears.*

89. *Commissioners may commit defaulter.*

*Certificates of Removal.*

90. *Commissioners to issue certificates of removal.*

*Prisoners.*

91. *Release of prisoners.*

*Parents and Executors.*

92. *Liability of parents, guardians, and executors.*

*Number or Letter Assessments.*

93. *Assessments under number or letter in arrear.*

*Special Assessments.*

94. *Notification of special assessments to collectors of inland revenue.*

*Savings.*

95. *Saving as to English and Irish railways.*

*Recovery in Ireland.*96. *Savings as to Ireland.**Recovery in Scotland.*97. *Recovery of duty refused in Scotland.**Payment in Postage Stamps.*98. *In Scotland or Ireland payment may be made in postage stamps.**Payment by Post Office Orders.*99. *In Scotland taxes may be paid by post office orders.*

## PART VII.

## RECEIPT AND ACCOUNT.

*Receipts.*100. *Appointment of receipt.*101. *Collectors to account after the 1st January in every year.*102. *Unlawful receipt of public moneys.*103. *Proceedings at receipts.*104. *Collectors of inland revenue may administer oath and put questions.**Schedules of Arrears.*105. *The schedule of arrears to be ground of process.*106. *Board may retain schedules.*107. *Failure to deliver such schedule. Levy of issues.**Schedules of Deficiencies.*108. *Collectors to make a return upon oath of persons from whom the duties cannot be collected.**Schedules of discharge. Schedules of default.*109. *Defaulters returned in schedule.**Re-delivery of Books by Collectors.*110. *Books to be delivered up by collector.**Proceedings for Arrears.*111. *Duties may be sued for in High Court.**Insurers.*112. *Parish to be set insurer for duties unaccounted for and return made to High Court.**Recovery of Re-assessments.*113. *Costs and duties re-assessed may be recovered as duties are recovered.**Surplus Land Tax.*114. *Application of surplus land tax. Excess to be shown on duplicate. To be paid to Bank of England. Account to be opened at head office. To be applied in the redemption of land tax. Allowance to collectors and assessors. Final schedules.*

## PART VIII.

## PROCEEDINGS AGAINST COLLECTORS.

*Failure to raise Duties (England).*115. *Surveyors may report any failure to raise duties.*

*Examination of Collectors (England).*

116. *Commissioners to call collectors before them.*

*Revocation of Appointments.*

117. *Collectors neglecting their duty may be dismissed, and others appointed.*

*Seizure of Estates.*

118. *Commissioners empowered to seize, sell, and convey estates of defaulting collectors.*

*Actions on Collector's Bonds.*

119. *Evidence of default.*

120. *Costs.*

*Penalties on Collectors.*

121. *Penalties for neglect.*

**SCHEDULES.**

An Act to consolidate Enactments relating to certain Taxes and Duties under the management of the Board of Inland Revenue.

(6th August 1880.)

WHEREAS it is expedient that certain Acts now in force for the management and regulation of the duties of land tax, inhabited house duties, and property and income tax should be consolidated into one Act:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

**PART I.****PRELIMINARY.**

1. This Act may be cited as the Taxes Management Act, 1880.

2. This Act is divided into parts, as follows:

Part I.—Preliminary.

Part II.—General.

Part III.—Commissioners, clerk, and assessor.

Part IV.—Assessment.

Part V.—Appointment of collectors.

Part VI.—Collection.

Part VII.—Receipt and account.

Part VIII.—Proceedings against collectors.

3. This Act shall commence and have effect from and immediately after the thirty-first of December one thousand eight hundred and eighty.

4. (1.) The enactments described in the Third Schedule to this Act are hereby repealed, subject

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to the exceptions and qualifications in this Act mentioned.

(2.) The repeal of enactments or any other thing in this Act shall not affect—

(a.) Anything done or suffered before the commencement of this Act under any enactment repealed by this Act; nor

(b.) Any protection, right, or privilege acquired, or duty or liability imposed or incurred, under any enactment so repealed; nor

(c.) Any fine, forfeiture, or other punishment incurred or to be incurred in respect of any offence committed before the commencement of this Act against any enactment so repealed; nor

(d.) The institution or prosecution to its termination of any legal proceeding or other remedy for ascertaining any such liability, or enforcing or recovering any such fine, forfeiture, or punishment as aforesaid.

(3.) All existing bonds and securities given under or in pursuance of any enactment hereby repealed shall have the same force and effect as if they had been given under or in pursuance of this Act.

5. (1.) In this Act—

“Additional Commissioners” means the Additional Commissioners of the Property and Income Tax, or any two of them appointed under the provisions of the Income Tax Act, 1842:

“Assessor” means the person or persons appointed to be assessor or assessors respectively of income tax and inhabited house duties for any parish in conformity with the rules and directions of this Act or the Tax Acts, and includes the surveyor of taxes acting as assessor when required so to act:

"Board" means the Commissioners of Inland Revenue for the time being, or any two of them :

"Clerk" means the clerk to the General Commissioners or to the Land Tax Commissioners respectively appointed in accordance with the directions of this Act :

"Collector" means the person or persons appointed to be collector or collectors respectively of the land tax, the income tax, and the inhabited house duties in conformity with this Act for a parish or group, or union, electoral district, or county or part of a county :

"Collector of Inland Revenue" means a person appointed by the Board to be a collector and officer for the collection and receipt of the several revenues and duties of excise stamps and taxes, or as his deputy :

"Division" means and includes any hundred, rape, lathe, stewarty, or district, or any place of separate jurisdiction under the Land Tax Acts :

"General Commissioners" means the Commissioners for the general purposes of the income tax and inhabited house duties, or any two or more of them acting in or for any division under and in the execution of this Act or the Tax Acts :

"Group" means any parishes united or grouped for the purposes of the collection of the duties and the land tax :

"High Court" means Her Majesty's High Court of Justice :

"Land Tax Acts" means and includes any Act, or part of any Act, relating in any way to the assessment or redemption of the land tax :

"Land Tax Commissioners" means the persons appointed under authority of Parliament for executing the Acts granting a land tax, or any two or more of them :

"Parish" means and includes any town, ward, township, tithing, parish, place, or precinct for which a separate assessment of the duties or the land tax may be made, or for which any assessor or collector may be lawfully appointed for the purpose of assessing or collecting the duties or the land tax :

"Part" means part of this Act :

"Prescribed" means prescribed or provided by this Act or the Tax Acts, or by the Board where the Board have power to prescribe :

"Return" includes any list, statement, declaration, account, schedule, or estimate in writing by whomsoever made or from whomsoever required in conformity with the directions of this Act or the Tax Acts :

"Special Commissioners" means the Commissioners for the special purposes of the Income Tax Acts appointed by the Treasury under the provisions of the Income Tax Act, 1842 :

"Surveyor" means an inspector of taxes or surveyor of taxes appointed by the Treasury or Board for the purposes of this Act, the Tax Acts, and Land Tax Acts, and acting under the authority of the Board :

"Tax Acts" means and includes any Act or part of any Act relating to the assessment of any person, land, tenement, heritage, property, or profits whatever to the income tax or to the inhabited house duties :

"The duties," except where expressly limited, means and includes the duties on inhabited houses and the duties of income tax, or any of them, assessed or to be assessed under this Act or under the Tax Acts :

"The Income Tax Act, 1842," means the Act of the session of the fifth and sixth years of the reign of Her present Majesty, chapter thirty-five, intituled "An Act for granting to Her Majesty the duties on profits arising from property, professions, trades, and offices, until the sixth day of April one thousand eight hundred and forty-five" :

"The Income Tax Act, 1853," means the Act of the session of the sixteenth and seventeenth years of the reign of Her present Majesty, chapter thirty-four, intituled "An Act for granting to Her Majesty duties on profits arising from property, professions, trades, and offices" :

"Treasury" means the Commissioners of Her Majesty's Treasury.

(2.) The Schedules to this Act shall be read and have effect as if they were part of this Act.

6. Nothing in this Act shall alter the effect of, or in any way supersede—

(1.) An Act passed in the session of the seventeenth and eighteenth years of Her present Majesty, intituled "An Act for the valuation of lands and heritages in Scotland" :

(2.) Any Act amending such last referred-to Act :

(3.) The Valuation (Metropolis) Act, 1869.

7. (1.) In the several enactments described in the Fourth Schedule to this Act a reference to this Act shall be deemed to be substituted for a reference to any one or more of the enactments described in the Third Schedule to this Act, or any enactment amending the same.

(2.) Where any Act passed before this Act

and not specified in the Third or Fourth Schedule to this Act refers to any enactment described in the Third Schedule, or to any enactment amending such last referred-to enactment, the reference shall be deemed to be to this Act.

8. (1.) Nothing in this Act shall affect the powers conferred on and exercised by the Special Commissioners.

(2.) Any power which in England under or by virtue of this Act may be executed by the General Commissioners may in Ireland be executed by the Special Commissioners.

9. All powers, authorities, rules, regulations, directions, and penalties contained in the Tax Acts and Land Tax Acts in regard to the mode of raising, levying, collecting, receiving, accounting for, and securing the duties and the land tax shall, in all cases not expressly provided for by this Act, and so far as the same are not superseded by and are consistent with the express provisions of this Act, be observed, applied, practised, and put in execution throughout the respective parts of the United Kingdom, for raising, levying, collecting, receiving, accounting for, and securing the duties and the land tax as fully and effectually to all intents and purposes as if the same were particularly repeated and re-enacted in this Act.

10. All matters within the jurisdiction of the High Court under this Act shall be assigned—

- (i.) In England and Ireland, subject to the Acts regulating the High Court, to the Exchequer Division of Her Majesty's High Court of Justice in England and Ireland respectively :
- (ii.) In Scotland to the Court of Session sitting as a Court of Exchequer.

## PART II.

### GENERAL.

11. This part shall extend to Great Britain, and also to Ireland as regards the duties of income tax so far as may be applicable.

### Board.

12. The Board shall have all necessary powers and authorities for carrying this Act into execution, and shall observe and obey in relation thereto the directions of the Treasury.

13. The collectors of inland revenue, surveyors, and all other officers or persons who shall be employed in the execution of this Act, or the Tax Acts, shall observe and follow the orders, instructions, and directions of the Board.

14. All moneys, bills, notes, drafts, or other orders or securities for the payment of money, and all remittances whatever received by the Receiver General of Inland Revenue, and by every collector of inland revenue, for or on account of the duties or the land tax, or arising therefrom (except only so much thereof as may be retained under sanction of the Treasury for the public service, or for the making of any payments required by any Act of Parliament to be made by the Board), shall from time to time be paid over or remitted into the Bank of England, and shall be transferred to the credit of Her Majesty's Exchequer under such regulations as the Board from time to time under the authority of the Treasury prescribe.

### Forms.

15. (1.) The forms in the Second Schedule to this Act, or forms to the like effect, varied as circumstances require, may be used, and shall be sufficient in law.

(2.) Every assessment, duplicate, charge, bond, warrant, notice of assessment or of demand, or other document required to be used in the assessing, charging, levying, and collecting of the duties and the land tax shall be made out, drawn, and prepared according to the several forms as prescribed and supplied or approved by the Board from time to time, and shall be valid and effectual without stating the case or the facts or evidence in any more particular manner than is required in and by such forms.

(3.) The Board shall provide books of printed forms of receipts with counterfoils for the use of the collectors, and may from time to time prescribe regulations for the inspection and filling up and use of such books and counterfoils, to which regulations every collector shall conform.

(4.) Any schedule, duplicate, or other document required to be on parchment by any Tax Act or Land Tax Act may, if the Board so direct, be on paper or other material as may be by such order prescribed, and then shall be as valid and effectual for all purposes as if it had been on parchment.

(5.) No assessment, charge, warrant, or other proceeding which shall be made or shall purport to be made by virtue or in pursuance or in execution of this Act, or the Tax Acts, or Land Tax Acts, shall be quashed or deemed to be void or voidable for want of form, or be impeached or affected by reason of any mistake, defect, or omission therein, provided the person or property charged or intended to be charged or affected by any such proceeding be designated therein to common intent and understanding, and such proceeding be in substance and effect in conformity with or according to the intent and meaning of the said Acts.

## 16. Under this Act—

- (a.) All notices and forms may be in writing or print, or partly in writing and print :
- (b.) All notices relating to the duties or the land tax that are required to be affixed on any place, or to be delivered to or otherwise served on any person, may be delivered by the surveyors of the districts in which such notices are required to the respective assessors for the purpose of serving or affixing the same :
- (c.) The delivery of such last-mentioned notices by a surveyor shall be as effectual as if the same had been delivered by the General Commissioners of the division or by the Land Tax Commissioners :
- (d.) Every assessor or collector is hereby required to observe such directions as may from time to time be given to him by the surveyor in all matters touching the time and manner of fixing or delivering or otherwise serving such last-mentioned notices, and the persons on whom the same are to be served, such directions having been previously seen and allowed by the said respective Commissioners :
- (e.) All notices or forms required or allowed to be served on any person may be either delivered to such person or left at the usual or last known place of abode of such person :
- (f.) A notice to a person to be given by a surveyor may be served and sent by post by a prepaid registered letter, and in proving such service or sending it shall be sufficient to prove that the letter containing the order, notice, or document was properly addressed, registered, prepaid, and posted :
- (g.) A notice to be given by the Board may, by their order, be signed by one of their secretaries or assistant secretaries, and any such notice purporting to be so signed by order of the Board shall be as valid and effectual as if signed under the hands of the Board :
- (h.) All notices to be given or delivered to or served on the Land Tax Commissioners, the General Commissioners, or the Additional Commissioners may be given or delivered to or served on their clerk, and such delivery to or service on their clerk shall be a good, valid, and effectual delivery to or service on the said respective Commissioners to all intents and purposes.

*Surveyors.*

17. The Treasury may from time to time constitute and appoint officers for the survey and inspection of the duties and for doing all things

belonging to the office of surveyor, according to the powers vested in them by this Act, the Tax Acts, or the Land Tax Acts, and may appoint allowances and salaries for the surveyors and other officers employed as aforesaid, and also pay such incidental expenses as necessarily attend the execution of this Act and of the said Acts.

18. If a surveyor wilfully makes a false and vexatious charge of the duties, or wilfully delivers or causes to be delivered to the General Commissioners a false and vexatious certificate of charge of the duties, or a false and vexatious certificate of objection to any supplementary return, or is guilty of any fraudulent, corrupt, or illegal practices in the execution of his office, or knowingly or wilfully, through favour, undercharges or omits to charge any person, such surveyor shall for every such offence incur a penalty of one hundred pounds, and on conviction be discharged from his office.

*Actions against Commissioners and Officers.*

19. No commissioner, sheriff, sheriff depute or substitute, clerk, surveyor, assessor, or collector who shall act or be employed in the execution of this Act, the Tax Acts, or Land Tax Acts shall be liable for or by reason of such execution to any penalty other than such as by this Act or the said Acts may be inflicted.

20. (1.) If an action or suit be brought against a commissioner, surveyor, collector, assessor, or other person for anything done in pursuance of this Act, the Tax Acts or the Land Tax Acts, such action or suit shall be—

- (a.) Commenced within six months next after the fact committed and not afterwards; and
  - (b.) Shall be laid in the county or place where the cause of complaint arose.
- (2.) No writ or process shall be sued out for the commencement of such action or suit until the expiry of one month next after notice in writing shall have been delivered to or left at the usual place of abode of the intended defendant by the attorney or agent of the intended plaintiff.
- (3.) Every such notice must clearly specify and completely contain—
- (a.) The cause of action;
  - (b.) The name and place of abode of the intended plaintiff; and
  - (c.) The name and place of abode of his attorney or agent, if any.
- (4.) No evidence shall be given on the trial of such action or suit of any cause of action other than such as is contained in such notice.
- (5.) The intended defendant to whom such notice shall have been delivered may, at any time before the expiration of such month as aforesaid, tender amends to the intended plaintiff, or his

attorney or agent, and in case such amends shall not be accepted may plead such tender in bar to any action or suit to be brought against him grounded on such notice, writ, or process.

(6.) The defendant in every such action or suit may plead such tender and any other plea with leave of the court, in bar of such action or suit, and may give this Act and the special matter in evidence at any trial to be had thereupon.

(7.) Every such action or suit which shall be brought against any collector shall be defended by the respective Land Tax Commissioners or General Commissioners for the division or parish where such collector shall have been appointed by them or act under their warrant or directions.

(8.) The costs and charges attending the same, as also any other action or suit to be brought by or against the said commissioners or any collector by them appointed for anything done in pursuance of this Act or the Tax Acts, or Land Tax Acts, shall be defrayed by an assessment made in a just proportion on the several persons, lands, tenements, and hereditaments liable to be assessed in the parish in or relating to which the alleged cause of action shall have arisen, or for which such collector shall have been appointed.

#### *Penalties.*

21. (1.) All such penalties as under this section are recoverable in the High Court shall be sued for by information in the name of the Attorney General for England, in Scotland in the name of the Lord Advocate, and in Ireland in the name of the Attorney General for Ireland, and may be recovered with full costs of suit.

(2.) The Board may at their discretion mitigate or stay or compound proceedings for any such penalty, and reward any informer who may assist in the recovery of any such penalty.

(3.) All penalties exceeding twenty pounds imposed by virtue of this Act, the Tax Acts, or Land Tax Acts, excepting such as are directed to be added to the assessments, shall be recoverable in the High Court.

(4.) In default of prosecution within the space of twelve months from the time of any penalty being incurred under the provisions of this Act, or of the said Acts, no penalty or forfeiture shall afterwards be recoverable in any other manner.

(5.) Subject to the above restriction as to time, all pecuniary penalties not exceeding twenty pounds imposed by virtue of this Act, or of the said Acts, and also such of the said penalties exceeding twenty pounds as are directed to be added to the assessment of the land tax or the duties, shall be recoverable before the Land Tax Commissioners and General Commissioners respectively, and in Scotland either before the said Commissioners or before the sheriff depute or substitute for the county, division, or parish where the offence is committed.

(6.) The said respective Commissioners and sheriff depute or substitute shall take cognizance of the offence in respect of which a penalty may be imposed by them upon information in writing made to them, and upon a summons to the party accused to appear before them at such time and place as they shall fix; and they shall examine into the matter of fact, and hear and determine the same in a summary way, and on proof made thereof, either by voluntary confession of the party accused, or by the oath or solemn affirmation of one or more credible witness or witnesses, or otherwise, as the case may require, shall give judgment for the penalty, or for such part thereof as the said Commissioners, sheriff depute or substitute, shall think proper to mitigate the same to, and shall assess the penalty on the party by way of supplementary assessment, which penalty so adjudged shall be levied in like manner as the duties; and the said adjudication of the Commissioners, sheriff depute or substitute, shall be final and conclusive to all intents and purposes, without appeal; and the proceedings and decree of the Commissioners, sheriff depute or substitute, shall not be removable by any process whatever into any court of law or equity.

(7.) All the moneys arising from fines, penalties, issues, and forfeitures, or shares thereof, recovered, levied or received under this Act, the Tax Acts, or the Land Tax Acts, shall be paid, by the person receiving or recovering the same, to the collector of inland revenue without delay, or within ten days after he receives from the Board an order for the payment thereof to such collector.

#### *Execution of Warrants.*

22. All constables and other peace officers are hereby required to aid in the execution of this Act, and to obey and execute such precepts and warrants as shall be to them directed in that behalf by the respective Commissioners under the authority of this Act.

#### *Obstruction.*

23. If any person wilfully obstructs a surveyor, assessor, or collector in the execution of his office or duties, he shall for every such offence incur a penalty of fifty pounds.

#### *Administration of Oaths in Ireland.*

24. In Ireland any one of Her Majesty's justices of the peace may administer all oaths or affirmations required or allowed to be taken by this Act or by the Income Tax Acts before a commissioner or justice by any officer or person, in any matter touching the execution of this Act or the said Acts.

## PART III.

## COMMISSIONERS, CLERK, AND ASSESSOR.

25. This Part shall not extend to Ireland.

*Meetings.*

26. (1.) The Land Tax Commissioners, General Commissioners, and Additional Commissioners respectively shall, for the execution of all or any such things as are by them required to be done at a meeting by this Act, the Tax Acts, or the Land Tax Acts, meet together from time to time within the times prescribed by this Act or the said Acts at the most usual place of meeting within their respective divisions.

(2.) They may meet and do any Act in execution of the said Acts as Commissioners within any city, town, or place, being a county of itself, or otherwise having exclusive jurisdiction and situated within, surrounded by, or adjoining to their respective divisions; and all things so done by them within such city, town, or place, as Commissioners acting for such division, shall be as valid and effectual in law as if the same had been done within such division.

*Commissioners.*

27. (1.) The General Commissioners shall be the Commissioners for executing the Acts relating to the inhabited house duties.

(2.) The sheriff depute or substitute of any county or division in Scotland for the time being shall be ex-officio and without other qualification a General Commissioner for such county or division.

28. The Board may, if they think fit, authorise the increase of the number of persons to be chosen General Commissioners for any division and of persons to supply vacancies amongst such Commissioners to any number not exceeding fourteen respectively, and such persons shall be appointed and chosen according to the regulations contained in section four of the Income Tax Act, 1842.

29. Should the Commissioners fail to hold any meeting or to appoint a clerk, assessor, or other officer, or to do any other thing in the execution of this Act or of the Tax or Land Tax Acts within the time prescribed, they shall, as soon as may be after the time at which such meeting should have been held and such power should have been executed, meet and execute the same and cause the same to be executed, and all such meetings and appointments (excepting in any case in which the appointment of collector by reason of neglect or omission or otherwise became absolutely vested in the Board), and the performance of any such other thing as aforesaid at any other time than the prescribed time shall,

notwithstanding such failure, be valid and effectual.

30. If in any case the assessments and duplicates of the duties for any parish are not signed and allowed in due time, to the prejudice of the Revenue, for want of a sufficient number of General Commissioners acting or attending where and when such assessments or duplicates ought to be allowed, any two of the General Commissioners acting within the same county shall sign and allow the assessments or duplicates wanting for the parish.

31. All warrants and precepts of the General Commissioners shall be executed by the respective persons to whom the same are directed, in any part of the same county, for any division of which the Commissioners are appointed.

32. Any one or more of the Land Tax Commissioners and General Commissioners may respectively administer all oaths or affirmations required or allowed to be taken by this Act or by the Land Tax Acts or Tax Acts before such Commissioners by any officer or person in any matter touching the execution of this Act or the said Acts.

33. All assessments, duplicates of assessments, minute books, and other public books and papers relating to the land tax or the duties in the custody or possession of any clerk, assessor, or collector, or of the legal representatives of any person who has died or shall die during the holding of any such office, or after his removal from the same, or of his agent or attorney, or of any other person, are hereby declared to be respectively the property of the Land Tax Commissioners and General Commissioners acting in the respective divisions for the time being and in succession, and shall be placed with and remain in the custody and possession of them or of their respective clerks for the time being, or of such other person as the respective Commissioners for the time being from time to time at their meetings direct.

34. (1.) Every person now or at any time hereafter having in his custody or possession any books or papers relating to the land tax or the duties shall, within one month next after notice in writing by the Board (a true copy thereof being given to or left at his usual place of abode), deliver up the same to such person as the Board by such notice shall appoint, whose receipt for the same shall be a good and sufficient discharge to the person delivering the same; and

(2.) If any such person fails to deliver the same according to the notice, he shall for every such offence incur a penalty of fifty pounds.

35. If a commissioner acting in the execution of the Tax Acts or the Land Tax Acts interested, in his own right, or in the right of any other person as his agent, in any controversy or appeal arising under those Acts or this Act takes part in the determination of such controversy or appeal and fails to withdraw himself from the meeting of Commissioners at which the same is heard and determined, he shall incur a penalty of fifty pounds.

#### *Transfers of Parishes.*

36. (1.) In England the Land Tax Commissioners may, at a general meeting for any county, if and as they see fit (subject as herein provided), transfer the jurisdiction of any parish in such county from the division to which the same may then belong, together with the quota of land tax payable by it at the time of such transfer, to any adjoining or other division of the same county, or to any new division, which new division the Commissioners are hereby empowered to create in any such county.

(2.) Every such alteration of divisions shall be certified in writing under the hands of the majority of the Commissioners present at such general meeting to the Board, and shall be subject to and dependent on the approval of the Treasury.

(3.) If the Treasury approves of such alteration, such approval, together with the quotas to be assessed and levied on the parishes so transferred, shall be certified to the Commissioners of the respective divisions by the Board.

(4.) Thereupon, and from the time fixed by the Board, the Land Tax Commissioners and General Commissioners acting in and for the division extended or created in manner aforesaid shall have full jurisdiction and control in, over, and throughout every parish so transferred, and shall and may execute all the powers and provisions of the Tax Acts, Land Tax Acts, and this Act in and throughout the same.

(5.) Nothing in this section shall authorise any alteration of the limits or jurisdiction of any of the cities, boroughs, cinque ports, towns, and places respectively in Great Britain for which separate and distinct quotas of land tax are provided by and enumerated in the Land Tax Acts.

#### *Union of Parishes.*

37. (1.) For the more convenient execution of the Tax Acts and Land Tax Acts in England the Land Tax Commissioners for any division, at any meeting of such Commissioners convened for that purpose, may unite any two or more parishes, and certify such union to the Board, for the approval of the Treasury.

(2.) If the Treasury approves of such union,

such approval shall be certified by the Board to the Commissioners.

(3.) Thereupon, and from the time fixed by the Board, such united parishes shall, for all the purposes of the land tax and the duties, be considered as one parish.

(4.) Nothing in this section shall authorise any alteration of the quota of land tax now chargeable by law on any parish.

(5.) Where parishes have been so united and the union proves to be inconvenient, the Treasury, on receipt of a resolution of the Land Tax Commissioners acting for the division in which the parishes are situate, passed at a meeting convened for the purpose, may, if they think fit, dissolve the union either as regards all or some or one of the parishes so united.

#### *Poor Law Parishes.*

38. (1.) Where in England, under the authority of Parliament, any part of a parish or place has been formed into a new parish or place for the purposes of poor law administration, or any parish or place, or part of a parish or place, has been amalgamated with or included within the boundaries of another parish or place for the said purposes, the Board may, if they think fit, by order in writing, direct that such new parish or place or such parish or place with which or within the boundaries of which any parish or place, or part of a parish or place, has been amalgamated or included, shall be a parish for which a separate assessment of the duties shall be made, and for which assessors and collectors may be appointed for the purpose of assessing and collecting the said duties.

(2.) In case any parish or place or part of a parish or place in the jurisdiction of one body of General Commissioners is amalgamated with or included within the boundaries of a parish or place in the jurisdiction of another body of General Commissioners, such order shall have the effect of transferring the jurisdiction to such last-named body.

#### *Parochial Books.*

39. The Land Tax and General Commissioners, surveyors, and assessors, or any person authorised by them, or any of them, shall have liberty from time to time and at all seasonable times to inspect and to take copies or extracts from any book kept by any parish officer or other person of or concerning the rates made for the relief of the poor, or any other public taxes, rates, or assessments, or any contributions under the management of the kirk sessions in any place within the limits for which they shall be appointed; and if any person in whose custody or power any of the said books shall be fails to permit the said in-

spection, or the copies or extracts to be made as aforesaid, or to attend the said Commissioners with such books when required so to do, he shall for every such offence incur a penalty of ten pounds.

*Exemption from Juries.*

40. Every General Commissioner or Additional Commissioner to whom a certificate has been or shall be granted by the Board under the thirty-fifth section of the Income Tax Act, 1842, shall, so long as such certificate continues in force, be discharged, not only from the several offices referred to in the said enactment, but also from serving on juries in the county where he dwells.

*Clerk.*

41. (1.) At their first meeting in each year to be held in England before the tenth and in Scotland before the thirtieth day of April, the General Commissioners or the major part of them shall elect a fit person to be their clerk, and one other fit person, if the said Commissioners shall deem it necessary, to be his assistant, for all the assessments to be made of the several duties with which the said Commissioners shall be charged within their respective limits for one year, and the person so elected shall by virtue of such election be the sole clerk to such Commissioners for all the said assessments to be made by them for such year, and shall not be removeable from his said office during the year for which he shall be appointed as aforesaid, except for just cause, and at a meeting of the Commissioners for that purpose duly summoned by notice in writing signed by such Commissioners, or in Scotland by their respective conveners, and served on each of the Commissioners who shall have qualified in and for the division, and by the major part of the Commissioners present at such meeting.

(2.) The clerk shall have as remuneration the allowances as appearing in the First Schedule.

(3.) If a clerk or clerk's assistant wilfully obstructs or delays the execution of the Tax Acts or this Act, or negligently conducts or wilfully misconducts himself in the execution of any of such Acts, he shall incur a penalty of one hundred pounds, and shall be dismissed from the office of clerk and be incapable of again acting as clerk or clerk's assistant.

(4.) No clerk shall demand, take, or receive any fee, gratuity, or perquisite for anything to be done by him as clerk by virtue and under the authority of this Act or the Tax Acts from any person other than the person appointed by the Board to pay the allowances which such clerk may be entitled to.

(5.) Every appointment of clerk to the Land

Tax Commissioners shall be made for the term and under the same rules and regulations for the appointment, continuance, and removal of a clerk as prescribed by this Act.

(6.) In the event of a vacancy occurring in the course of any year by the death, dismissal, or resignation of any clerk or otherwise, the Land Tax Commissioners and General Commissioners respectively shall fill up such vacancy by the election in manner aforesaid of a person to be clerk for the remainder of such year.

*Assessors.*

42. (1.) The General Commissioners shall in England before the tenth and in Scotland before the thirtieth day of April in each year direct their several and joint precept to such inhabitants of each parish, and such number of them as they think most convenient, to be assessors for such parish, requiring them to appear before the said Commissioners at such place and at such time not exceeding ten days after the date of the precept as they appoint.

(2.) At such their appearances the General Commissioners shall appoint such of the said inhabitants as they think proper to be the assessors for such parish, and shall give them instructions how they are to make their certificates and assessments, and shall then and there appoint another day, which day shall not be later in England than the twentieth day of July, and in Scotland than the first Wednesday in August in the same year, for them to appear before the Commissioners, and bring in their certificates of assessments, which shall be verified upon their oaths or solemn affirmations, and not otherwise.

(3.) An assessor's appointment shall be and continue for and during the year to commence on the sixth day of April in each year, and until other assessors shall be appointed for the same parishes and for the same duties.

(4.) In every parish wherein assessors are not appointed before the times limited in each year to serve for the year ensuing, the last appointment of assessors for the parish shall continue in force until other assessors are appointed for the parish, and for the same duties.

(5.) Notice of continuance in office of an assessor as aforesaid shall be given to him by the General Commissioners or by the surveyor. By such notice such assessor may be required to attend on a day and place named therein, and there to receive and take charge of all notices and papers to be delivered to him for the due execution of his office.

(6.) In a parish where two able and sufficient inhabitants cannot be found, the General Commissioners shall nominate and appoint fit persons

residing near such parish to be assessors for the parish.

(7.) If a failure happens in the appointment of the assessor for any parish, whereby the assessment of the duties is likely to be delayed, the magistrates or justices of the peace having jurisdiction in or over such parish, or any two of them, shall, on notice of such default given them by the surveyor, appoint an assessor, observing therein the rules and regulations prescribed by this Act for the appointment of such officer by Commissioners.

43. (1.) In any parish where assessors are not appointed in pursuance of this Act, or being appointed do not take on themselves the office at or before the time limited, or where the assessors for any former year on whom the duty of assessors devolves do not take on themselves the office of assessor at or before the time limited, the surveyor of the district may execute the duty of assessor for such parish until assessors are appointed, and take on themselves the said office.

(2.) The surveyors acting in the metropolis as defined by the Valuation (Metropolis) Act, 1869, shall be the assessors for any duties of income tax which may be at any time granted and payable under Schedules (A.) and (B.) of the Income Tax Act, 1853, upon any property in the said metropolis, and shall also be the assessors for the duties on inhabited houses in the said metropolis; and nothing in this Act shall empower the General Commissioners to appoint assessors in the metropolis as so defined for the duties under Schedules (A.) and (B.) of the Income Tax Act or for the inhabited house duties.

44. No person inhabiting any city, borough, or town corporate shall be compelled to be an assessor for a place out of the limits of such city, borough, or town.

45. Every person appointed an assessor shall, on his appointment, and before he acts or takes upon himself such office, make and subscribe the following declaration, viz.:

‘I *A.B.* do solemnly declare that I will diligently execute the office of an assessor to which I am appointed by authority of the Taxes Management Act, 1880, and that in the assessment which I am required to make by any Tax Act granting to Her Majesty any duties to be assessed under the regulations of the said Act, I will faithfully and honestly act without favour or affection, according to the best of my skill and knowledge.’

#### *Penalties on Assessors.*

46. (1.) If a person to whom a precept as aforesaid is directed by the General Commissioners—

- (a.) Wilfully neglects or refuses to appear before them according to the tenour and effect of such precept; or
- (b.) Having appeared, refuses to submit to be appointed assessor of the said duties, or any of them; or
- (c.) Neglects or refuses to make and subscribe the prescribed declaration of office,

he shall for every such offence incur a penalty of ten pounds.

(2.) If a person appointed by the General Commissioners an assessor—

- (i.) Wilfully neglects or refuses to perform his duty in the due and speedy execution of this Act and the Tax Acts:
- (ii.) Wilfully neglects or refuses to charge and assess himself and all other persons chargeable with the duties, or to make his assessment in accordance with the law:
- (iii.) Acts in the office of assessor before taking the prescribed declaration of office,

he shall for every such offence incur a penalty of twenty pounds.

(3.) If a person appointed assessor by the justices or magistrates—

- (a.) Wilfully neglects or refuses to take on himself the office:
- (b.) Wilfully neglects or refuses to perform his duty in the due and speedy execution of such office:
- (c.) Wilfully neglects or refuses to charge and assess himself and all other persons chargeable with the duties, or to make his assessment in accordance with the law:
- (d.) Neglects or refuses to make and subscribe the prescribed declaration of office,

he shall for every such offence incur a penalty of fifty pounds.

47. The several assessors shall have remuneration as appearing in the First Schedule.

## PART IV.

## ASSESSMENT.

*Year.*

48. Every assessment shall be made for the year commencing and ending on the days as herein specified.

(1.) As regards land tax, from the twenty-fifth day of March to the following twenty-fourth day of March inclusive.

(2.) As regards inhabited house duties—

(a.) In England from the sixth day of April to the following fifth day of April inclusive:

(b.) In Scotland from the twenty-fourth day of May to the following twenty-third day of May inclusive.

(3.) As regards income tax—

In Great Britain and Ireland from the sixth day of April to the following fifth day of April inclusive.

*Assessors Certificates.*

49. (1.) On or before the day appointed by the General Commissioners for that purpose, every assessor shall deliver to such Commissioners—

(a.) His certificates of assessments under Schedules A., B., and E. of the Income Tax Acts and of inhabited house duties; and

(b.) All returns relative to the duties made to him before the above appointed day.

(2.) All returns made by the parties to be charged after that appointed day shall be delivered to the Commissioners.

50. (1.) In case the assessor does not receive a return from a person liable to be charged to the duties, he shall to the best of his information and judgment—

(a.) Make an assessment on every such person of the charge which ought to be imposed on him under Schedules A., B. and E. of the Income Tax Acts, and under the Acts relating to the duties on inhabited houses; and

(b.) Estimate the amount at which every such person ought to be charged in respect of the duties under Schedule D. of the Income Tax Acts, returning to the Commissioners the name and residence of every such person and any other particular the Commissioners may require.

(2.) On the delivery to the General Commissioners by the assessor of any certificates of assessment and of estimate, and their acceptance thereof, they shall forthwith deliver the same to the surveyor for examination.

*Examination of Assessments.*

51. (1.) The surveyor may inspect and examine every return, and also every first assessment of the duties, made for any parish for any year, as well before as after the respective Commissioners sign and allow such first assessments.

(2.) Every person in whose custody any return may be shall on the request of the surveyor deliver the same into his custody, taking his receipt for the same; and every person in whose custody any such assessment shall be shall on the request of the surveyor produce the same, and the surveyor is hereby authorised to take charge of such assessment until he has taken such copies or extracts as may be necessary.

*Amendment of Assessments.*

52. If the surveyor discovers that any properties or profits chargeable to the duties have been omitted from such first assessments, or that any person so chargeable has not made a full and proper or any return, or has not been charged to the said duties, or has been undercharged in the said first assessments, or has obtained and been allowed from and in such first assessments any allowance, deduction, abatement, or exemption not authorised by the Tax Acts, then

(1.) As regards inhabited house duties and the duties chargeable under Schedules A., B., and E. of the Income Tax Acts—

(a.) Before the first assessment has been signed and allowed, the surveyor shall correct and amend such assessment, and charge the person liable to the full amount and at the full rate of duty at which he ought to be charged.

(b.) After the first assessment has been signed and allowed, but within four months after the expiration of the year to which such assessment relates, the surveyor shall certify the particulars of any such insufficient return, default, omission, undercharge, or unauthorised deduction to the General Commissioners, who shall thereupon rectify the same by signing and allowing an additional first assessment to be made in accordance with the particulars set forth in such certificate, subject to appeal and other proceedings as authorised in the case of the first assessment.

(2.) As regards the duties chargeable under Schedule D. of the Income Tax Acts, the Additional Commissioners shall at any time after the said first assessments have been signed and allowed, but within four months after the expiration of the year to which such first assessments relate, make an assessment on any such person in an additional first assessment in such sum as

according to their judgment ought to be charged on such person, subject to objection by the surveyor and to appeal.

#### *Place of Assessment.*

53. (1.) Where a parish is in two or more counties or divisions the duties to be charged in or for such parish shall be assessed by the Commissioners acting for that part of the parish where the church is situate, and the whole parish shall be deemed for the purposes of this Act and the Tax Acts to be situate in the county or division wherein such church is situate; and also where any dwelling-house or any other premises occupied therewith is situate in two or more parishes the whole duties to be charged thereon shall be assessed, raised, levied, collected, and paid in one of the parishes only as the surveyor deems most expedient, to be notified by him to the Commissioners acting for either of the parishes, and the party charged shall be relieved from any second assessment made thereon, or any part thereof, as in other cases of double assessments.

(2.) If a doubt arises as to the district or parish in which a person ought to be assessed to the duties, and where a person has been assessed, or shall be liable to be assessed, to the duties, in two or more districts or parishes, the Board may order that he shall be assessed to the duties in such district or parish as appears to them to be proper, and he shall be assessed accordingly.

54. (1.) If a doubt arises as to the parish in which any lands are situate, or if such lands are extra-parochial, the Board may, by order in writing, direct that such lands shall, for the purpose of the assessing, charging, collecting, and levying the duties, and for all other purposes of the Tax Acts, be annexed to and deemed to be within such neighbouring parish, and within such division as the Board may deem the most convenient.

(2.) After such order the duties shall be assessed, charged, raised, collected, and levied upon the occupiers of and inhabitants on such lands, by and under the authority of the General Commissioners for the division, and by the surveyor, assessors, and collectors for the parish to which such lands have been so annexed, and all regulations contained in this Act or in the Tax Acts for the making of any assessment, charge, or surcharge to the duties, and for the hearing of appeals against the same, shall, as regards such lands, have application.

(3.) The Board may revoke any such order and substitute any other order in lieu thereof from time to time as often as it shall appear to them to be expedient so to do.

#### *Errors.*

55. No assessment, nor any charge made upon any assessment, shall be impeached or affected—

(a.) By reason of any mistake therein, or in either of them,

(i.) In the Christian name or names, or surname, of any party liable to any of the duties;

(ii.) In the description of any profits or property;

(iii.) In the amount of the duty charged;

(b.) By any variance between the notice and the certificate of charge or assessment; provided that in cases of charge the notice thereof be duly served on the person intended to be charged, and such notice and certificate do severally contain in substance and effect the several particulars on which the charge is made; and every such charge shall be heard and determined on its merits by the General Commissioners.

#### *Allowance of Assessments.*

56. (1.) After the surveyor has examined the assessments delivered by the assessors, the General Commissioners shall take them into consideration; and in case the surveyor has not objected to the assessments and the Commissioners are satisfied that they have been made truly and without fraud, and so as to charge the properties and persons contained therein with the full duty which ought to be charged, the Commissioner shall sign and allow such assessments.

(2.) In case the surveyor objects to any assessment and applies for a revision thereof, suggesting in writing to the General Commissioners any error, mistake, omission, or fraud in making the same, they shall, according to the best of their judgment, rectify such assessment so that the proper duty may be fully charged according to the intent and meaning of the Tax Acts.

#### *Appeals.*

57. (1.) So soon as any assessment of the duties for a parish shall be signed and allowed, notice of appeal meetings shall be given as prescribed by the Income Tax Act, 1842, and the clerk shall inform the surveyor thereof.

(2.) All appeals against the inhabited house duties shall be determined in like manner as appeals under Schedule A. of the Income Tax Acts.

(3.) A person aggrieved by an assessment upon him included in any first or additional first assessment shall, on giving ten days notice of objection in writing to the surveyor within the time limited for hearing appeals, be entitled to appeal to the General Commissioners against such assessment within twenty-one days after the

date of the notice of such assessment to the party charged therewith.

(4.) No assessment delivered to the General Commissioners shall be altered by them, or any of them, before the time for hearing and determining appeals, and then only in cases of charges appealed against, and according to the determination of the said Commissioners upon their hearing the matter of appeal particularly relating thereto, upon a general appeal day duly appointed, except in such cases only where such Commissioners are specially authorised to alter or rectify any such assessment; and if the clerk or any other person alters or causes or procures or suffers to be altered any assessment after the same has been allowed by the Commissioners except as aforesaid, or in cases of appeal, and by order of the said Commissioners, made after appeal as aforesaid, such clerk or other person shall incur a penalty of fifty pounds.

(5.) The General Commissioners shall cause notice of the day of appeal to be given to the appellants, and shall meet together from time to time, with or without adjournment, until all appeals shall have been determined.

(6.) The said Commissioners shall not, upon the hearing of any such appeal, make an abatement or reduction in the charge made upon any person by assessment or surcharge by any assessor or surveyor, but the charge or surcharge shall stand good and remain part of the annual assessment, unless it shall, upon the hearing of such appeal, appear to the Commissioners then present, or the major part of them, by examination of the appellant, upon oath or affirmation, or by other lawful evidence to be produced by him, that such person is overcharged in or by such assessment or surcharge.

(7.) At every and any appeal the surveyor and assessor may then and there attend, and

(a.) Give his reasons in support of the assessment or surcharge appealed against:

(b.) Produce any lawful evidence in support of such assessment or surcharge:

(c.) Have full power and liberty to be present during all the time of hearing such appeals and of the Commissioners determining the same.

(8.) If on an appeal it appears to the said Commissioners that a person assessed or surcharged ought to be charged to an amount beyond the amount contained in such assessment or surcharge, the Commissioners shall charge such person to the amount of the sum omitted.

(9.) No barrister, solicitor, attorney, or any person practising the law shall be allowed to plead before the said Commissioners on such appeal for the appellant or officers either *viva voce* or by writing.

(10.) Appeals once determined by the General Commissioners, or by the major part of them

present on the day appointed for the hearing of appeals, shall be final; and neither the determination of the Commissioners nor the assessment then and there made thereupon shall be altered at any subsequent meeting, or at any other time or place, except by order of the High Court when a case has been required as provided by this Act.

58. The determination of the General Commissioners after appeal on an objection made by the surveyor to an assessment on any person to the duties, or to any estimate on which any assessment is made for any year, shall preclude the surveyor from afterwards making a further charge for the same year on the same person in respect of the same matter, property, or profits included in the assessment or estimate before objected to and determined as aforesaid.

#### *Cases for Opinion of High Court.*

59. (1.) Immediately upon the determination of any appeal under the Income Tax Acts by the General Commissioners, or by the Special Commissioners, or any appeal under the Acts relating to the inhabited house duties by the General Commissioners, the appellant or the surveyor may, if dissatisfied by the determination as being erroneous in point of law, declare his dissatisfaction to the Commissioners who heard the appeal, and having so done may, within twenty-one days after the determination, require the Commissioners, by notice in writing addressed to their clerk, to state and sign a case for the opinion of the High Court thereon. The case shall set forth the facts and the determination, and the party requiring the same shall transmit the case, when so stated and signed, to the High Court within seven days after receiving the same, and shall previously to or at the same time give notice in writing of the fact of the case having been stated on his application, together with a copy of the case to the other party, being the surveyor, or the appellant, as the case may be.

(2.) In relation to cases to be so stated, and the hearing thereof, the following provisions shall have effect:

(a.) The party requiring the case shall, before he shall be entitled to have the case stated, pay to the clerk to the Commissioners a fee of twenty shillings for and in respect of the case:

(b.) The High Court shall hear and determine the question or questions of law arising on a case transmitted under this Act, and shall thereupon reverse, affirm, or amend the determination in respect of which the case has been stated, or remit the matter to the Commissioners with the opinion of the High Court thereon, or may make such other order in rela-

tion to the matter, and may make such order as to costs as to the High Court may seem fit, and all such orders shall be final and conclusive on all parties :

- (c.) The High Court shall have power, if they think fit, to cause the case to be sent back for amendment, and thereupon the same shall be amended accordingly, and judgment shall be delivered after it shall have been amended :
- (d.) The authority and jurisdiction hereby vested in the High Court shall and may (subject to any rules and orders of the High Court in relation thereto) be exercised by a judge of the High Court sitting in chambers, and as well in vacation as in term time :
- (e.) The High Court may from time to time, and as often as they shall see occasion, make and alter rules and orders to regulate the practice and proceedings in reference to cases stated under this Act.

(3.) An appeal shall lie from the decision of the High Court, or of any judge thereof, upon any case stated under the above provisions to Her Majesty's Court of Appeal, and from thence to the House of Lords, and from the decision of the Court of Session, as the Court of Exchequer in Scotland, upon any case so stated to the House of Lords.

(4.) The fact that a case so stated is pending before the High Court therein referred to shall not in any way interfere with the payment of the income tax or inhabited house duty according to the assessment of the Commissioners by whom the case was stated, but the income tax or inhabited house duty shall be paid according to such assessment, as if the case had not been required to be stated, and in the event of the amount of assessment being altered by the order or judgment of the High Court the difference in amount, if too much has been paid, shall be repaid with such interest (if any) as the High Court may allow, and if too little, shall be deemed to be arrears (except so far as any penalty is incurred on account of arrears), and shall be paid and recovered accordingly.

#### *Double Assessments.*

60. Whenever it appears to the satisfaction of the Board that a person has been assessed more than once to the duties for the same cause and for the same year, they shall direct the whole or such part of such one or more of the assessments as appears to be an overcharge to be vacated, and thereupon the same shall be by such order vacated accordingly.

#### *Books of Assessments.*

61. (1.) Whenever and so soon as the General Commissioners and Land Tax Commissioners

shall have signed and allowed any assessment to the duties or the land tax, and the time limited for hearing any appeals therefrom shall have elapsed, the clerk shall number the pages in such book of assessment, and duly cast up and total the sums in each page.

(2.) The clerk shall forthwith and before the next ensuing receipt transmit to the collector of inland revenue an account on a form prescribed by the Board, showing the total sums to be paid by and for each parish, together with the names and addresses of the collectors appointed to receive the same.

#### *Changes.*

62. (1.) If a person assessed under Schedule D. of the Income Tax Acts ceases within the year of assessment to carry on the concern in respect of which the assessment is made, and is succeeded therein by another person, the surveyor shall, within four months from the fifth day of April next after such change, certify to the General Commissioners for the district in which the assessment is made the particulars thereof, and the Christian and surname and place of residence of the person assessed, and of the successor to the concern, and the date of the change in the carrying on of the concern, if the same be known to the surveyor.

(2.) On receipt of such certificate the Commissioners shall cause notice to be given to the respective parties of a meeting of Commissioners for considering the same; and the Commissioners shall, on the examination of the respective parties, if in attendance, or on other satisfactory proof of the facts, adjust the assessment by charging the successor with a fair proportion thereof from the period of his succeeding to the concern and relieving the person originally assessed from a like amount.

(3.) The determination of the Commissioners on any such certificate shall be final, and the assessment so adjusted shall be recoverable from the respective parties in like manner as an original assessment; and if either of the parties has paid in respect of an assessment so certified more than the proportion which appears by the determination of the Commissioners to be chargeable on him, the amount so overpaid shall, when recovered from the party liable, be paid to the person by whom the overpayment was made.

#### *Omissions from First Assessments.*

63. (1.) Where the surveyor discovers that a person liable to any of the duties has not been assessed in respect thereof in any first or additional first assessment, he may, at any time within the year following the year for which such person ought to have been charged, charge the person liable to the amount which ought to have been charged within the year of assessment, to the best

of his judgment, and certify the particulars of such omission and charge to the General Commissioners, who, upon delivery of any such certificate, and upon oath being first made either by the surveyor or other credible witness of the due service of a notice of charge on the person so charged, shall sign and allow the said certificate as herein-after prescribed, but subject to appeal.

(2.) The surveyor shall give to every person so charged notice of such charge, and the particulars thereof.

(3.) The certificate of the surveyor with oath of service of the notice of charge shall be deemed sufficient proof of the contents thereof, unless the contrary be shown on the production of such notice to the General Commissioners by the party charged; and no proof of the contents of any such notice shall be required by the said Commissioners to be given to them either by a copy thereof or otherwise previous to their signing or allowing the said certificates, nor upon appeal therefrom, nor other proof in any matter relating to the same, except the oath of the person who shall have made service of such notices, and which shall be in the form and to the effect following; that is to say,

‘ I A.B. do swear that a notice was duly served upon each person mentioned in the above certificate containing the particulars as set forth therein respectively on the day or days mentioned in the said certificate.’

(4.) If any person wilfully and corruptly makes a false statement in any such oath of service he shall be guilty of misdemeanor, and shall be liable to imprisonment for six months with or without a fine not exceeding fifty pounds.

(5.) No charge upon any assessment of duties shall be allowed or signed unless the certificate thereof shall be delivered to the General Commissioners within the year following the year of such assessment.

(6.) The delivery of any such certificate of charge by any surveyor to their clerk in default of a meeting of the said Commissioners shall be deemed a sufficient delivery.

(7.) In default of a meeting of the Commissioners before the time limited for the hearing of appeals from the charges of the surveyor, or if the said surveyor shall not have had notice of a meeting of the Commissioners, they shall, at their first meeting to be held thereafter, sign and allow the said certificates, and afterwards hear and determine all appeals therefrom.

#### *Amended Return.*

64. (1.) A person to whom such notice of charge has been given may, within ten days from date of such notice, whether he shall have made a return before or not,

(a.) Deliver to the surveyor a true and perfect

return containing all particulars required by the Tax Acts; or

(b.) Give notice in writing to the surveyor that he doth abide by the return before made by him.

(2.) To such return or notice shall be annexed a declaration, signed by the person to whom such notice of charge has been given, in his own name and handwriting or sign, and also signed and attested by one credible witness at the least. Every such declaration shall allege—

(a.) The grounds and cause of his neglect to make a return;

(b.) The grounds and cause of each omission made or mentioned in the notice of charge to have been made in such former return; or

(c.) The grounds and cause of each claim of exemption, allowance, or deduction made in the former return; and

(d.) That the return or amended return to which the said declaration is annexed is a true and perfect return of all particulars required of the declarant by the Tax Acts, to the best of his judgment and belief; and

(e.) That such neglect, omission, or claim was not made with intent to defraud the Revenue.

(3.) The surveyor may object to such return or amended return, or declaration thereto annexed, and shall in such case serve notice of objection on the party charged, and certify such return or amended return and declaration annexed thereto, with the cause of his objection, to the General Commissioners, who shall thereupon cause the assessment to be made according to such last-mentioned certificate of objection, from which charge no abatement shall be made except on the appeal of the party so charged.

(4.) If the surveyor is satisfied with such return or amended return and declaration annexed thereto, he may certify his satisfaction therewith to the General Commissioners, who shall thereupon cause the party charged to be assessed on the amount of such return in single duty.

65. (1.) Every person charged in pursuance of this Act by the certificate of any surveyor shall have the period of ten days after service of the notice of charge to deliver his amended return to the surveyor, and no certificate of charge shall be signed or allowed by the General Commissioners nor any appeal heard from such charge before the expiration of such period.

(2.) If the person so charged shall, before the expiration of the said period deliver a return and declaration which the surveyor objects to, such return and declaration shall be a sufficient notice of appeal from such charge to the Commissioners.

(3.) If the person so charged shall not, before the expiration of the said period, deliver a return or declaration, the Commissioners may, on his or his agent's appearance before them, and the delivery to them of a return and declaration as is herein required on the day appointed for hearing appeals from the charges of the surveyor, hear and determine the matter of such charge, although the person charged shall not have given any previous notice of his intention to appeal.

(4.) In default of the appearance of the party charged or of his agent before the Commissioners on the day of appeal, or in default of the production of a return or declaration as aforesaid, the certificate of charge shall be confirmed by the Commissioners.

66. (1.) If a person in any such declaration wilfully and fraudulently declares anything which is false, he shall be guilty of misdemeanor, and shall be liable to imprisonment for not exceeding six months, and be fined in a sum not exceeding treble the amount of duty for which he has been charged, as the Court before whom such trial shall be had shall order.

(2.) The indictment for such misdemeanor shall be laid in the county where the declaration was exhibited to the General Commissioners.

#### *Appeals against Surcharges.*

67. (1.) Appeals against surcharges shall be heard and determined according to the directions prescribed in respect of appeals against the first assessments of the same duties.

(2.) If a person surcharged is prevented by absence or sickness, or other sufficient cause, to be proved before the General Commissioners on the oath or solemn affirmation of the said person or otherwise, from appealing within twenty-one days after the date of the notice of charge, or from attending in person within such time, the Commissioners may postpone the hearing of the appeal for such time as may to them appear necessary.

68. (1.) On every surcharge allowed by the General Commissioners on appeal in whole or in part the assessment shall be made on the amount of the surcharge allowed in treble the rate of duty prescribed in the Tax Acts.

(2.) But the General Commissioners may remit in whole or in part such treble duty and charge in single duty only, where they are of opinion—

(a.) That the assessment might have been amended by the surveyor by means of the original return of the person charged :

(b.) That the alleged default, neglect, omission, or claim of exemption, allowance, or

deduction was not wilfully made with intent to defraud the revenue :

(c.) That the person charged was prevented from making an amended return in due time by absence or sickness or other sufficient cause :

(d.) That there was reasonable cause of doubt or controversy on the part of the appellant on the subject matter of appeal.

#### *Supplementary Assessments.*

69. A certificate of surcharge shall be sufficient authority to the General Commissioners to cause supplementary assessments of the duties to be made from time to time. The supplementary assessments shall include all surcharges according to the certificates of surcharge amended in cases requiring amendment according to the determination of the Commissioners, and all treble duties or parts thereof assessed over and above the rates of duty prescribed in the Tax Acts and all penalties imposed by the Commissioners within the year of assessment for offences against the Tax Acts or this Act.

#### *Charge Duplicates.*

70. (1.) The respective Land Tax and General Commissioners shall yearly cause two duplicates of the charge by every assessment to be made out on the prescribed form by their clerk.

(2.) One of such duplicates shall be delivered to the proper collector of inland revenue, and the other transmitted to the Board, within the times herein-after limited.

(3.) The said duplicate shall be made as regards land tax for the same parishes and divisions for which distinct duplicates are directed to be made out or may be made out under the Land Tax Acts, and as regards the duties for such parishes for which a separate assessment of the duties may be made.

(4.) The said duplicates shall contain—

(a.) The names and surnames of the several assessors and collectors for every parish and division ; and

(b.) The full amount of the sums given in charge to each collector throughout the whole year, without any discharge, diminution, or defalcation on any pretence whatever.

(5.) The said duplicates shall be made out, delivered, and transmitted on or before the thirty-first day of March in each year, or if the assessments shall not then have been made within one month at farthest after all appeals against such assessments shall have been heard and determined.

(6.) If the clerk neglects or refuses to make

out and deliver such duplicates within the time and in manner herein-before directed, or wilfully makes any false entry in or omits any sum from such duplicates, he shall incur a penalty of one hundred pounds, and on conviction be discharged from his office.

## PART V.

### APPOINTMENT OF COLLECTORS [ENGLAND].

71. This Part shall not extend to Ireland or except where expressly mentioned to Scotland.

#### *Grouping of Parishes.*

72. (1.) The Land Tax Commissioners acting for a division may, with the assent of the Board, group parishes together in such division for the purposes of collection; and parishes so grouped shall for such purposes, but for such purposes only, be deemed and taken to be one parish.

(2.) Where parishes have been so grouped and the grouping proves to be inconvenient, the Land Tax Commissioners may, with the assent of the Board, dissolve the grouping either as regards all or some or one of the parishes so grouped.

#### *Nomination.*

73. (1.) The Land Tax Commissioners and General Commissioners shall, in the month of April in each year, nominate one or more able and sufficient person or persons, being resident within each parish or group, to the office of collector of taxes for every such parish or group within the division for which such Commissioners act.

(2.) In the event of there being no able or sufficient person willing to take the office of collector resident within the parish or group, the respective Commissioners may nominate an able and sufficient person resident within a neighbouring parish or group.

(3.) It shall not be compulsory on any person to accept the office of collector, and no person shall be liable to any penalty for neglecting or refusing to take upon himself the said office, provided he within fourteen days after the notification to him of his appointment either personally or by registered letter addressed to the clerk to the said respective Commissioners signifies his refusal to accept the office.

(4.) In the event of a person so nominated not giving notice in the above manner within the prescribed time, and on his failing when required by the respective Commissioners to attend a meeting for the purpose of receiving his appointment and warrant as collector, he shall incur a penalty of twenty pounds.

(5.) On the expiration of the time above limited for declining the office the said respective Commissioners shall appoint such person or persons as they think fit, who has or have been nominated and has or have not declined the office in the prescribed manner, to be collector or collectors for the parish or group for which he or they have been nominated.

(6.) The fact of the nomination or appointment of a person to be collector shall be notified to him personally, or by a registered letter sent through the general post.

(7.) In any case in which a person nominated as collector for a parish or group declines in manner aforesaid the office, the respective Commissioners may nominate some other able and sufficient person to the office, proceeding in the manner herein-before directed with regard to any such or any subsequent nominations.

(8.) If the collector for any parish shall not have been appointed on or before the thirty-first day of May in any year, the power of appointing a collector for such parish for that and for every subsequent year shall absolutely vest in the Board, and the Board shall appoint a collector for such parish.

(9.) In the event of the death of a collector for any parish or group in the course of any year, or before the collector's accounts for such parish for such year shall have been closed, the Board or the Land Tax Commissioners and General Commissioners respectively, by whom such collector was for such year appointed, may appoint to the vacant office such person or persons as they may think fit and who may not decline the office in manner aforesaid.

(10.) If a vacancy so occurring by the death of a collector be not filled within forty days from the date of death by the Land Tax Commissioners and General Commissioners where the appointment to such vacancy has to be made by them, the power of filling such vacancy for such year shall vest in the Board.

#### *Security to the Crown.*

74. (1.) The Board may whenever they think fit—

(a.) Give notice to the Land Tax Commissioners and General Commissioners that they require any or all of the persons nominated or appointed collectors in or for any parish or group or division specified in such notice, to give security to the satisfaction of the Board for the due collecting, accounting for, and paying over of the moneys collected or to be collected by such persons respectively, and for the due performance of their duties as such collectors:

(b.) Cause the like notice to be given to any person who has been appointed collector.

(2.) After such notice to the Commissioners it shall not be lawful for them to appoint any person to be collector in or for any such parish or group or division, unless he shall previously have given security to the satisfaction of the Board.

(3.) In case a person who has been appointed collector, and to whom such notice as aforesaid shall be given, fails to give security within the time limited by the notice for that purpose, his nomination, and appointment, and authority as collector shall cease at the end of that time.

#### *Appointment by Board.*

75. (1.) If after a notice as aforesaid given by the Board there is neglect or delay in the appointment of collectors who previously have given security to the Crown, or a failure on the part of a person nominated or appointed collector to give such security, the Board may appoint a collector or collectors of the land tax and the duties in or for the parish or group or division in or with respect to which such neglect, delay, or failure has occurred.

(2.) A person appointed by the Board collector for a parish or group shall have, use, and exercise, and is hereby invested with the like powers and authorities as by this Act and the laws in force a collector appointed by the Land Tax Commissioners and General Commissioners respectively could or might use or exercise or is invested with.

(3.) The appointment by the Board of a collector shall be by warrant under their hands, and a warrant of the Board directed to a person appointed by them to be collector shall have the like force and effect and confer the like power and authority as a warrant of the said respective Commissioners directed to a person appointed by them to be collector.

76. (1.) The security to be given in pursuance of this Act to the satisfaction of the Board shall be either by bond to the Crown, to be entered into by the collector, with sureties, to be approved by the Board, or as the Board determine, and in such sum as the Board require.

(2.) The condition of every such bond shall be that the said collectors shall—

(a.) duly demand the land tax, the duties, and moneys of the persons on whom the same are assessed, or from whom the same are payable; and

(b.) in case of nonpayment thereof enforce the powers of this Act and the several Acts in that behalf against those who make default; and

(c.) account for and pay over all such moneys as shall come to their hands as or for

any land tax or the duties to the proper officer appointed by the Board for the receipt thereof; and

(d.) such further and other terms and provisions as the Board may deem fit and proper.

#### *Security to the Commissioners.*

77. (1.) The Land Tax Commissioners and General Commissioners may require collectors on their appointment to give security to their satisfaction.

(2.) Any two or more inhabitants of a parish or group being respectively charged to the land tax or the duties in the assessment for the year current, may by notice in writing to the respective Commissioners require that the person whom they propose to appoint collector for such parish or group shall give security to the satisfaction of the Commissioners, such notice to be served personally on or by registered letter addressed to their clerk, and after receipt of such notice it shall not be lawful for the Commissioners to appoint a person who has not given such security.

(3.) The security to be given to the Commissioners may be by a joint and several bond, with two sureties at the least, to and in the names of any two or more of such Commissioners, and the penal sum in any such bond shall, if so required, be equal to the whole land tax duties and moneys assessed in the parish or group, and to be collected by the person whom it is proposed to appoint collector for such parish or group, and from whom security is required.

#### *Exemption from Stamp Duty.*

78. No bond or other security given under this Act by a collector or other person in respect of the collection, accounting for, or remitting of the land tax or the duties shall be liable to stamp duty.

#### *Liability of Parishes.*

79. (1.) No parish shall be answerable for the acts, neglects, or defaults of a collector appointed by the Board, or who gives security to the Crown, nor shall a parish be liable to be re-assessed for an arrear or deficiency of the land tax or the duties arising from any default or failure of such collector.

(2.) Where the collector of a parish is not appointed by the Board or does not give security to the Crown the parish shall be answerable for the amount of the land tax and the duties, and for the same being duly demanded of the persons charged therewith, and for the collector, or his executors or administrators, duly paying over the sums received by him to the collector of inland revenue.

(3.) Every arrear of the land tax and the duties arising from the default or by the failure

of a collector for which a parish is answerable, shall be re-assessed within or upon such parish as soon after such default shall be discovered as conveniently can be done, and shall be charged on the amount of the assessment which shall be made for the same tax or duties in the year commencing from the fifth day of April preceding the time of making such re-assessment, by duly apportioning the amount of such arrear amongst the several persons assessed in that year to the same tax or duties respectively on which such arrear shall have accrued, according to each person's assessment thereof, as nearly as the case will admit, and by the like rules, methods, and directions by which the original assessment was made of the same tax or duties to be raised and levied in such manner as any assessment may by this Act, the Tax Acts, or Land Tax Acts be raised and levied.

*Poundage.*

80. The several collectors in England shall have remuneration as appearing in the First Schedule.

*Appointment of Collectors (Scotland).*

81. (1.) The Treasury shall appoint the collectors of the land tax and of the duties in and for Scotland.

(2.) The Treasury may appoint distributors of stamps in Scotland, or any of them, or other persons to be collectors or other officers for collecting and receiving the land tax and the duties in Scotland and for such parts of Scotland as the Treasury may think fit.

(3.) Such salaries and allowances as the Treasury think fit shall be granted to such distributors or other persons who shall hold their respective offices during the will and pleasure of the Treasury or the Board.

(4.) Such distributors or other persons shall, before they act in the execution of their respective offices, give security to the satisfaction of the Board.

(5.) No county or burgh in Scotland shall be liable for any deficiency in the collection of the land tax or the duties occasioned by the default of any collector appointed as aforesaid.

(6.) If a person other than a distributor of stamps in Scotland is appointed to be collector or other officer as aforesaid, a return showing the name of such person, with his salary and allowances, shall be laid by the Treasury before Parliament within twenty-one days after the commencement of the session of Parliament which shall next follow every such appointment.

(7.) In this section the term "distributor of stamps" includes "sub-distributor of stamps."

(8.) With respect to any local taxes or assessments nothing in this section shall affect any right of the Commissioners of Supply to appoint

collectors of such taxes or assessments, and when in any Act in regard thereto anything is required to be done by or any power is granted to the collectors of land tax, such thing may be done and such power may be exercised by the collectors of the said local taxes or assessments appointed by the Commissioners of Supply.

PART VI.

COLLECTION.

*Time for Payment.*

82. (1.) In England the land tax and the duties, except only such duties of income tax as are payable by way of deduction, or are assessable in respect of railways, and in Ireland the income tax (with the like exceptions as in England) in every assessment for every year shall be payable on or before the first day of January in such year.

(2.) In Scotland the land tax and duties, except only such duties of income tax as are payable by way of deduction, in every assessment for every year shall be payable on or before the first day of January in such year.

(3.) The land tax and duties included in any assessment whatever for any year, signed and allowed as by this Act directed on or after the first day of January in any such year, shall be deemed to be due and payable on the day next after the day on which such assessment may be signed and allowed by the Land Tax Commissioners or General Commissioners respectively.

*Collectors Duplicates.*

83. (1.) When and so soon as any assessments of the land tax and duties, or any of them, shall have been signed and allowed by the Land Tax Commissioners and General Commissioners respectively, and the time for hearing appeals against such assessments shall have expired, the said respective Commissioners shall forthwith sign and seal respectively one duplicate of every land tax assessment and two duplicates of every assessment of the duties, which duplicates shall be duly prepared by the clerk to the said respective Commissioners on the prescribed forms.

(2.) The respective Commissioners shall deliver the duplicate of the land tax assessment, and one of the said duplicates of the assessment of the duties, together with warrants for collecting the same in the prescribed form to the collector of the parish for which the assessments are made, and the other of the said duplicates of the assessment of the duties they shall deliver to the surveyor for the district. The assessments shall be kept by the clerk for the use of the said Commissioners respectively.

(3.) A collector who has been required to give security under this Act, shall not have delivered to him his duplicates and warrants until he has given such security.

#### *Additional First Assessments.*

84. (1.) Any assessments not made, or against which any appeal shall be depending when the first assessments are signed and allowed, shall, on the making or determining of the same, from time to time be added to such first assessments, and to the respective duplicates thereof, by being included in a separate form of assessment and duplicate, and the duties therein which ought to have been previously collected and paid shall be collected, levied, and paid by the collector.

(2.) Any person having in his custody or possession any such duplicate, and refusing to deliver over the same to the collector appointed in conformity with this Act, on demand made by him for the same, shall incur a penalty of one hundred pounds.

#### *Demand.*

85. (1.) Every collector shall, when the land tax and the duties become due and payable, make demand of the several sums contained in the duplicates given him by the Land Tax and General Commissioners in charge to collect from the persons charged therewith, or at the places of their last abode, or on the premises charged with the assessment or duties, as the case may require.

(2.) The collectors of house duty and income tax under Schedules (A.) and (B.) shall, in the demand note delivered previous to payment, distinctly describe the property and specify the amount of the assessment and the rate at which the duty or tax is charged upon such assessment.

(3.) On payment of the land tax and the duties the collector shall give acquittances under his hand on the prescribed form (without charge for such acquittances) unto the persons who pay the same.

#### *Recovery.*

86. (1.) If a person refuses to pay the sum charged upon him by virtue of the Land Tax Acts, the Tax Acts, or this Act, on demand made by the collector, according to the assessments and warrants to him delivered by the Land Tax and General Commissioners, such collector may, and he is thereunto authorized and required, for nonpayment thereof, to distrain upon the messuages, lands, tenements, and premises charged with such sum of money, or to distrain the person so charged by his goods and chattels, and all such other goods and chattels as the collector is hereby authorized to distrain, without any further authority from the said respective Commissioners for that purpose than the warrant to such collector delivered on his appointment.

(2.) For the purpose of so levying a distress, a collector may, upon warrant under the hands and seals of the said respective Commissioners, obtained for that purpose, break open in the day-time any house or premises, calling to his assistance any constable or other peace officer for the parish, group, or division where any refusal, neglect, or resistance shall be made. And it shall be the duty of all constables or other peace officers, when so required, to aid and assist the collector in the execution of such warrant and in levying the distress in the house or premises.

(3.) A levy or warrant to break open shall be executed by or under the direction and in the presence of the collector.

(4.) Every distress levied by a collector shall be kept for the space of five days at the costs and charges of the person so refusing to pay.

(5.) If the said person does not pay the respective sums of money so due within the said five days, then the said distress shall be appraised by two or more of the inhabitants where the said distress is taken, or other sufficient persons, and there be sold by public auction by the said collector or his deputy, for payment of the said money; the overplus coming by the said distress (if any there be), after deducting the said money and also the costs and charges of taking, keeping, and selling the said distress, which costs and charges the said officer is hereby authorized to retain, shall be restored to the owner thereof.

(6.) The provisions in regard to warrants of distress contained in an Act passed in the thirty-third year of His late Majesty King George the Third, intituled "An Act to authorize justices to impose fines upon constables, overseers, and other peace and parish officers for neglect of duty, master of apprentices for ill usage of such their apprentices, and also to make provision for the execution of warrants of distress granted by magistrates," shall apply to levies and distrains made by collectors for recovery of the duties or land tax.

87. If a collector advances and pays over to the collector of inland revenue any sum of money for or on account of the land tax or the duties assessed on any other person, whether at his request or not, such collector may, in default of repayment to him at any time within the space of six months after such payment, levy the land tax or the duties by the like ways and methods as such collector might have levied the same before such payment thereof to such collector of inland revenue, and as if the same had not been paid or satisfied.

88. (1.) No goods or chattels whatever belonging to any person at the time any of the duties or the land tax became in arrear shall be liable to be taken by virtue of any execution or other

process, warrant, or authority whatever, or by virtue of any assignment, on any account or pretence whatever, except at the suit of the landlord for rent, unless the party at whose suit the said execution or seizure shall be sued or made, or to whom such assignment shall be made, shall, before the sale or removal of such goods or chattels pay or cause to be paid to the collector all arrears of the said duties or land tax which shall be due at the time of seizing such goods or chattels, or which shall be payable for the year in which such seizure shall be made, provided such duties and land tax shall not be claimed for more than one year.

(2.) In case the duties and land tax shall be claimed for more than one year, then the said party at whose instance such seizure shall have been made, paying the said collector the aforesaid duties and land tax due for one whole year, may proceed in his seizure as he might have done if no duties and land tax had been so claimed; but in case of refusal to pay the said duties and land tax the said collector is hereby authorized and required to distrain such goods and chattels, notwithstanding such seizure or assignment, and to proceed to the sale thereof according to this Act, in order to obtain payment of the whole of the said duties and land tax so assessed, together with the reasonable costs and charges attending such distress and sale; and every such collector so doing shall be indemnified by virtue of this Act.

89. If any person shall refuse or neglect to pay any sum charged upon him by virtue of the Tax Acts or this Act within ten clear days after demand as aforesaid, and no sufficient distress can or may be found whereby the same may be levied, the General Commissioners may by warrant under their hands and seals commit such person to prison, there to be kept without bail until payment shall be made of that sum or security given for payment thereof, together with such further sum as the said Commissioners shall adjudge to be reasonable for the costs and expenses of apprehending and conveying to prison such person; and every such person shall be detained and kept in prison according to the tenor and effect of such warrant.

#### *Certificates of Removal.*

90. (1.) Whenever duties are charged upon and unpaid by a person who shall have removed from the parish in which the assessment to such duties is made, the General Commissioners for such parish shall sign and transmit by the intervention of the Board a certificate thereof to the General Commissioners acting within the parish where the person making such default of payment shall have removed to or happen to reside in or be, which last Commissioners shall raise

and levy the said duties charged upon the person removed as aforesaid, and cause them to be paid over to the collector of inland revenue; and where any such person shall have removed to another parish within the jurisdiction of the Commissioners by whom the assessment was made they may, by certificate, direct and authorise the collector for such last-mentioned parish to raise and levy the duties charged upon and unpaid by such person.

(2.) Whenever any person charged with the duties in any part of Great Britain or Ireland removes to any other part of Great Britain or Ireland without paying and discharging the duties charged upon him, the General Commissioners, or Special Commissioners acting as General Commissioners for the parish in which the assessment of such duties in default was made, shall sign and transmit by the intervention of the Board a certificate thereof to the Commissioners acting for the parish in the other part of Great Britain or Ireland to which such person making such default of payment shall have removed or happen to reside at, which last-named Commissioners shall raise and levy the said duties charged upon the person removed as aforesaid, and cause the moneys so raised and levied to be paid over to the Exchequer.

(3.) Where no sufficient distress can be found within the district of the said Commissioners for the parish to which any such defaulter may have removed, they are hereby authorised and required, by warrant under their hands and seals, to commit the person so making default of payment to prison, there to be kept without bail until payment shall be made of the said duties, or security be given for payment thereof, and of all reasonable costs and expenses, including costs for apprehending such person and conveying him to prison.

#### *Prisoners.*

91. By the direction of the Treasury or Board the General Commissioners shall issue their warrant to the gaoler or keeper of the prison in which any such person may be detained under their warrant as aforesaid for the liberation of such prisoner, and upon the receipt of such first-mentioned warrant such gaoler or keeper shall forthwith release and discharge out of custody such prisoner if for no other cause than as set forth in the warrant of commitment he shall be detained.

#### *Parents and Executors.*

92. Where a person chargeable with the duties is under the age of twenty-one years, or where a person so chargeable shall die, in such case the parents and guardians of such infant on default of payment by such infant, and the executors and administrators of the person so dying, shall be

liable to and charged with the payments which the said infant ought to have made and the person so dying was chargeable with; and if such parents or guardians, or such executors or administrators, neglect or refuse to pay as aforesaid, it shall be lawful to proceed against them in like manner as against any other person making default of payment of the duties; and all parents and guardians making payment as aforesaid shall be allowed all sums paid for such infants in their accounts; and all executors and administrators shall be allowed to deduct all such payments out of the assets and effects of the person so dying.

#### *Number or Letter Assessments.*

93. Whenever the duties on any assessment made under a number or letter in pursuance of the provisions of the Income Tax Act, 1842, become due and in arrear, the General Commissioners shall cause the said assessments to be added to the duplicates in the hands of the respective collectors to whom the collection of the duties assessed on persons by names shall have been intrusted to be collected by the same ways and methods and under the like powers and provisions as such last-mentioned duties are directed to be collected.

#### *Special Assessments.*

94. An extract from any assessment made by the Special Commissioners, certified under the hand of their clerk, in such form as the Board may prescribe, shall be a sufficient authority to the proper collector of inland revenue to whom such extract may be transmitted to receive, bring to account, and give discharges for the duties of income tax included in such extract and paid to him.

#### *Savings.*

95. Railway companies in England and Ireland shall pay the duties of income tax under Schedule D., by four quarterly payments; namely, on or before the twentieth day of June for the first quarterly instalment, and on or before the twentieth days of September, December, and March in each year for the second, third, and fourth quarterly instalments respectively.

#### *Recovery in Ireland.*

96. In the application of this Part to the collection, levy, and recovery of the duties assessed under Schedules A. and B. of the Income Tax Acts in Ireland, nothing shall alter the effect of or supersede section seventeen of the Income Tax Act, 1853; and any power which in England would be exercised in the recovery of the duties by a collector for a parish or group may, in

Ireland, be exercised by a collector for an union or other collecting district.

#### *Recovery in Scotland.*

97. In Scotland the following provisions shall have effect:

(1.) Upon certificate made to them by the collector for the division, district, or county, that any of the duties or land tax are due and not paid, the General Commissioners or Land Tax Commissioners respectively or sheriff depute or substitute for the county shall issue a warrant for the said collector recovering the said duties or the land tax by pointing or distraining the goods and effects of any person entered in such his certificate as being a defaulter.

(2.) Such warrant shall be executed by the constables or sheriff's officers of the county.

(3.) The goods and effects so pointed or distrained shall be detained and kept on the ground or at the house where the same were pointed or distrained, or in such other place, of which the owner shall have notice, near to the said ground or house, as the officer or constable so pointing and distraining the same shall think proper, for the space of five days, during which time the said goods and effects shall remain in the custody of the said officer or constable liable to the payment of the whole duty in arrear, and to the costs to be paid to the officer or constable who pointed the same, as herein-after directed, unless the owner from whom the same were pointed and distrained shall redeem the same within the said space of five days by payment of the said duties and land tax in arrear and costs to the officer or constable, to be settled in the same manner as if the said goods and effects had been sold as herein-after directed.

(4.) The goods and effects so pointed or distrained shall, after the expiration of the said five days, be valued and appraised by any two persons to be appointed by the officer or constable (which two persons shall be obliged to value the same, under the penalty of forty shillings sterling for each neglect or refusal), and shall be sold and disposed of, at a sum not less than the value, by the officer or constable who does point the same.

(5.) The value shall be applied in the first place to the satisfaction and payment of the duties or land tax owing by the person whose goods are so pointed, and in the second place to the payment for the trouble of the officer or constable so pointing, at the rate of two shillings per pound of the duties for which the goods shall be so pointed and distrained, unless the owner from whom the same were pointed or distrained shall redeem the same by payment of the appraised value, within the space of five days after the valuation, to the officer who pointed the same.

(6.) In case any surplus remains of the price or value after payment of the said duties, and after payment of what is allowed to be retained by the officer or constable in manner herein directed, such surplus shall be returned to the owner from whom the goods were poulded or distrained.

(7.) In case no purchaser appears at the said sale, then the said goods and effects so poulded and distrained shall be consigned and lodged in the hands of the sheriff depute of the county, or his substitute, and if not redeemed by the owner within the space of five days after the consignment in the hands of the said sheriff depute or substitute, the same shall be roupd, sold, and disposed of, by order of the sheriff, in such manner and at such time and place as he shall appoint, he always being liable to the payment of the duties to the said collector, and to payment to the officer or constable who shall have poulded and distrained the same, for their trouble and expense as before stated, and to the fees due to the officer or constable, and shall be in the third place entitled to one shilling per pound of the value of the goods so disposed of, for his own pains and trouble, after preference and allowance of the said duties, and of what is appointed to be paid to the officer or constable for their trouble.

(8.) There also shall be allowed to the officer or constable so poulding and distraining the expense of preserving the said goods and effects, and of maintaining the cattle, if there should happen to be any among the goods and effects so poulded and distrained, from the time of poulding and distraining the same, during the period allowed to the owner to redeem them, and also the expense of the sale; and in like manner the expense shall be allowed to the sheriff for preserving and maintaining the goods or cattle poulded and distrained, during the period that the owner is allowed to redeem after consignment in his hands, and until the sale thereof, and also the expense of the sale; and where no goods or effects sufficient for payment of the said duties can be found to be so poulded and distrained, and the person liable neglects or refuses to pay the same, in every such case the Commissioners, or the sheriff depute or substitute, is hereby authorized, by warrant, to commit such person to prison, there to be kept without bail until payment shall be made or security for payment be given.

(9.) Every auctioneer, or seller by commission, selling by auction in Scotland any goods or effects whatsoever by any mode of sale at auction, shall, at least three days before he begins any sale by way of auction, deliver or cause to be delivered to the collector of the said duties respectively within whose district such sale is intended to be, a notice in writing, signed by

such auctioneer or seller by auction, specifying therein the particular day when such sale is to begin, and the name and surname of the person, with his place of residence, whose goods and effects are to be sold.

(10.) If any such auctioneer or seller by auction shall sell any such goods and effects by way of auction, without delivering the notice hereinbefore required to be delivered, every such auctioneer, or person selling by auction, offending therein shall for such offence incur a penalty of fifty pounds.

#### *Payment in Postage Stamps.*

98. The Treasury may authorize collectors to receive and may make regulations for the receipt of postage stamps for payment of land tax and the duties, or any of them, payable in Scotland or Ireland; such postage stamps shall be delivered over to the Postmaster General or his officers, and the amount or value thereof paid out of the revenue of the post office to the inland revenue, and accounted for as moneys arising from the said land tax and duties.

#### *Payment by Post Office Orders.*

99. (1.) A person liable to the payment of land tax or the duties in Scotland having received the accustomed notice thereof, may, within twenty-one days after receiving such notice, produce the same at any money order office of the General Post Office in Scotland, and pay to the postmaster there the sum payable according to such notice, and thereupon the said postmaster shall deliver to him a post office order payable at the General Post Office in London to the Receiver General of Inland Revenue for the said sum, less the commission for such order, which order such person shall forthwith transmit to the collector at the office for receipt in a prepaid letter, specifying the particulars of the payment in such form as shall be prescribed and provided by the Board for that purpose.

(2.) Upon the receipt of the said order and letter, with the particulars and the form aforesaid, the collector shall credit the person named in the said letter with the amount specified in the said order, and with the said commission, in like manner as if the same had been paid to the collector in cash.

(3.) The provisions of this section shall, if the Treasury direct, be made applicable to and have operation in any parish in England in and for which the collector is appointed by the Board.

### PART VII.

#### RECEIPT AND ACCOUNT.

##### *Receipts.*

100. (1.) The Board may appoint in each year days of receipt for each county, division, parish

or group, and may adjourn such receipts from time to time.

(2.) At such receipt so appointed, every collector for each county, division, parish, or group shall account for the full amount of duties, land tax, and moneys given him in charge to collect.

(3.) The Board may require a collector to remit weekly or oftener to the Exchequer in anticipation of the receipt the amount of his collection, and may prescribe regulations as regards remittances and the mode thereof, which all collectors shall obey.

101. The collector shall pay over or account for the land tax, duties, and moneys given him in charge to collect to the collector of inland revenue or the proper officer for receipt on the day to be appointed for the receipt of the land tax and the duties next after the first day of January in every year.

102. If a person not duly appointed for that purpose or authorized by the Board in that behalf knowingly or wilfully takes or receives from a collector any sum of money arising from the duties or the land tax collected or received by such collector, the person so taking or receiving such sum of money shall forfeit double the amount of the sum so taken or received, such forfeiture to be recovered in the High Court.

103. On the appointed day of receipt, every collector for the division, district, group, or parish for which such receipt is held shall attend such receipt, and

(a.) Pay over to the collector of inland revenue or otherwise, as and if so required to do by the Board, all moneys received by him, and then in his hands and unaccounted for as collector, for which payments such collector shall receive receipts or discharges:

(b.) Deliver then, or to the Land Tax Commissioners and General Commissioners of the division respectively within three days afterwards, schedules of arrears in the prescribed form, with affidavits subscribed to be made on his oath or affirmation, and by him signed, setting forth the Christian and surname of each defaulter in his parish or group from whom he has demanded but has not then received payment of the land tax, duties, or moneys given him in charge to collect, and the respective sums then in arrear from each such defaulter:

(c.) Bring with him and produce to the collector of inland revenue or surveyor, whenever by either of them required,

his duplicate of assessment, showing the respective sums by him collected and received duly written off in the said duplicates:

(d.) Answer any lawful question demanded of him by the collector of inland revenue or surveyor touching the duties, moneys, or taxes given him in charge to collect.

104. At the times appointed for the delivery of schedules of arrears every collector of inland revenue may

(a.) Administer an oath to every collector (or being a person by law allowed to declare or affirm instead of swearing, a solemn affirmation) that he has fully paid all the sums by him collected or received of or for the land tax or the duties, and has fully accounted for all sums not collected or received in the schedule then delivered, and every collector shall true answer make to all such questions as shall be demanded of him:

(b.) Examine each collector on any matter touching the sums collected and the sums in arrear, and the substance of the answer or answers which any collector shall give on such examination shall in his presence be reduced into writing, and read to him, with liberty to alter and amend the same in any particular; and every such collector shall write or sign his assent to the same in his own handwriting or sign, and in his usual manner of writing or signing the same.

#### *Schedules of Arrears.*

105. (1.) Every schedule of arrears shall remain with the General Commissioners for forty days, during which period the collector shall give notice of such schedule to the defaulters named therein in such manner as the Commissioners direct.

(2.) A defaulter within the like period may pay his arrears to the collector, and the Commissioners shall discharge the arrears so paid from the schedule.

(3.) The Commissioners may issue fresh warrants to collect any of the arrears within the said forty days, and during that period use any lawful methods for the recovery of the said arrears, or direct the arrears to be levied by the collector under his former warrant.

(4.) Such fresh warrants may be directed to the collector or to any other person whom the Commissioners shall think proper, with authority to levy by distress and sale in the manner directed by the Tax Acts or this Act the sums in arrear, together with all costs and expenses attending the said process and the execution thereof; and

the sums so levied, after deducting the said costs and expenses, shall be paid to the collector of inland revenue, or otherwise as the Board may appoint, and shall be discharged from the schedule.

(5.) The person to whom such warrant is directed shall in the execution thereof act in obedience to the directions of the Commissioners.

(6.) On the expiration of the period of forty days a schedule of arrears may be certified to the High Court by and under the hands of the collector of inland revenue or of the General Commissioners.

106. The schedules of arrears when so certified shall be transmitted to the Board, who may before forwarding the same to the High Court direct the collector to use any method allowed by law for the recovery of any arrear therein included.

107. (1.) In default of the schedules of arrears being delivered by a collector at the receipt, or within the space of three days afterwards as aforesaid, the collector of inland revenue to whom the payments of the said duties shall not have been made at the times appointed for the receipt, may certify to the High Court the amount of the duties remaining unpaid to the best of his knowledge and belief, and the particular parish and the division where such failure has happened, together with the name of the collector of the said parish.

(2.) Such certificate of a default of a collector for non-delivery of a schedule of arrears shall be a sufficient authority to a judge of the High Court to cause immediate process to be issued out of the office of the Queen's Remembrancer against the collector.

(3.) Upon which writ the sheriff or other officer to whom the said process shall be directed shall levy issues after the rate of one shilling for every twenty shillings of the sums so unpaid or unaccounted for by the said certificate, and shall pay the moneys so levied, after deducting the costs, charges, and expenses to be settled and allowed by the Board, to the proper officer of Inland Revenue; and the said sheriff shall make immediate return of the said process to the High Court according to the due course thereof.

(4.) The Board, after payment of the duties in arrear so certified, may cause such issues to be remitted in whole or in part, after deducting thereout the costs and charges attending such process and levy, to be settled and allowed by them.

#### *Schedules of Deficiencies.*

108. (1.) Every collector shall make a due return, fairly written on the prescribed form

under his hand, to the General Commissioners, containing—

- (a.) The names, surnames, and places of abode of every person within his collection from whom he has not been able to collect or receive the duties for any of the causes mentioned in the section next following;
  - (b.) The particular reason for returning each defaulter; and
  - (c.) The particulars of the sum or sums charged upon every such person in default.
- (2.) The Commissioners, after the examination of every collector on oath or affirmation, shall—
- (i.) Ascertain the sums which, according to the Tax Acts, have been or may be discharged from any assessment for a cause specially allowed by such Acts, and make out their schedules of discharges containing such sums;
  - (ii.) Make out their schedules of defaulters containing—
    - (a.) The sums with which each defaulter ought to be charged, and the particulars thereof; and
    - (b.) The sums which have not been collected by occasion of the collector's neglect, and for which he shall be held liable, and which ought to be reassessed on the parish.
- (3.) The said Commissioners shall cause the said several particulars to be inserted by their clerk in schedules of discharge and default on the forms prescribed, and shall affix their hands and seals to such schedules.
- (4.) The said Commissioners shall transmit their said schedules to the Board, which schedules shall be deposited at the head office of the Board.

109. No collector shall insert in any schedule of deficiencies the name of a person to be returned into the High Court as not having paid the duties, unless such collector shall make oath, or make and subscribe a solemn affirmation (which said oath or affirmation shall be indorsed and certified on the said schedule), to the effect following; namely,

- (a.) That the sum for which such person is so returned in default is due and wholly unpaid either to such collector or to any other person for such collector, to the best of his knowledge and belief;
- (b.) That such person became bankrupt before the day on which the duties became payable, and had not goods and chattels sufficient whereon to levy such duties within the parish or limits for which

such collector has been appointed at any time since such duties became payable ; or

- (c.) That such person removed from the parish or limits for which such collector has been appointed before the day on which such duties became payable without leaving therein sufficient goods and chattels whereon such duties then payable could be levied ; and
- (d.) That there were not nor are any goods and chattels of any person liable to the payment of such duties in arrear or any part thereof whereby the same or any part thereof might be levied.

*Re-delivery of Books by Collectors.*

110. Every collector shall, on clearing his accounts for any of the duties or the land tax, deliver to the Board or Commissioners by whom he was appointed all duplicates of the assessment for the year and tax to which such accounts relate, together with the books of receipts and counterfoils furnished for his use.

*Proceedings for Arrears.*

111. (1.) Any duties contained, charged, or assessed in or by any assessment thereof made under the Tax Acts or this Act, may be sued for and recovered, with full costs of suit, and all charges attending the same, from the person charged therewith in the High Court as a debt due to the Crown, or by any other ways or means whereby any debt of record, or otherwise due to the Crown, can or may at any time be sued or prosecuted for or recovered, as well as by the summary means specially provided by this Act, or the Tax Acts, for levying the said duties.

(2.) A schedule of arrears delivered on oath or affirmation by a collector and certified to the High Court as prescribed, and a schedule of defaulters made or purporting to be made in pursuance of this Act, and certified under the hands of the Board to the High Court, shall be sufficient evidence of a debt due to the Crown, and sufficient authority to a judge of the High Court to cause process to be issued against any defaulter named in any such schedule to levy the sum in arrear and unpaid by such defaulter.

(3.) The production of a schedule of arrears or defaulters made or purporting to be made in pursuance of this Act, and purporting to contain the name of a defaulter, shall be sufficient evidence of the sum mentioned in such schedule having been duly charged and assessed upon such defaulter, and of the same being due and owing, and in arrear and unpaid to the Crown.

*Insupers.*

112. (1.) In case there is a failure—

- (a.) To assess or charge the duties or land tax in any parish :

(b.) To return the duplicates of the assessments of the duties or land tax made for any parish :

- (c.) To raise or pay the several sums charged upon any person for the duties or land tax in any parish :

The Board may at any time after such failure set insuper all sums so appearing in arrear, and may return such failure to the High Court by certificate thereof delivered to the Queen's Remembrancer.

- (2.) Such return shall specify—

- (i.) The parish and division and county where such failure has happened ;
- (ii.) The cause of such failure, so far as the same be known to the Board ;
- (iii.) The names of any two or more of the Land Tax Commissioners and General Commissioners for the division in which such failure has happened ;
- (iv.) The names of the assessors and collectors and the several persons belonging to such parish charged with the duties, and who shall have made failure in the payment thereof in case an assessment shall have been made.

(3.) Such Commissioners, assessors, and collectors, and any person charged with the duties or the land tax shall be respectively liable to process for such failure according to the exigency of the case.

(4.) Every parish so returned insuper for a sum not accounted for to the collector of inland revenue and contained in the duplicate of assessment to him delivered shall be liable to be reassessed in respect of such sums so returned insuper, excepting in such cases as parishes are by special enactment relieved from liability to re-assessment.

(5.) The Queen's Remembrancer shall cause such certificate to be enrolled in his office. Such enrolment shall be a record in his office as valid and effectual to authorize the issuing of process against the county, division, parish, and person.

(6.) Such process shall be forthwith, and from time to time as there shall be occasion, issued out of the High Court on the application of the Board, against such of the said Commissioners, officers, or persons who shall have made such failure.

*Recovery of Re-assessments.*

113. The authorities, powers, and provisions contained in this Act, or in the Tax Acts, or in the Land Tax Acts relating to the recovery of the duties and land tax, either under the warrant of the respective Land Tax Commissioners and General Commissioners directed to the collectors in their respective districts, or by process from the High Court, shall be applied, enforced, and put in execution for the levying and enforcing

the payment of any sum assessed or re-assessed by the said Commissioners for duties or costs, either under the authority of this Act, or of any other of the said Acts.

*Surplus Land Tax.*

114. (1.) On the warrant or instructions for making the assessment of the land tax to be delivered in each year, to the assessors for each parish, the Land Tax Commissioners shall certify, or cause to be certified by their clerk, the amount of the quota or sum in charge against such parish under the provisions of the Land Tax Acts.

(2.) Such certificate shall distinguish the proportion exonerated from the amount to be raised by assessment for the particular year, and the parish to which any such warrant or instructions shall relate.

(3.) If the total amount of the sums charged in any year by the assessment made under the Land Tax Acts for a parish exceeds the actual amount of the quota or proportion of land tax charged and to be raised in such parish, the clerk to the Land Tax Commissioners acting for the division shall (under penalty of twenty pounds for neglect or refusal so to do) make and insert at the foot of the duplicate a correct summary according to the prescribed form relating to every such assessment.

(4.) All powers and provisions in regard to the collection of the duties or the land tax shall be put in execution for levying, securing, and recovering the excess of or surplus land tax in any assessment, as if the assessment, including any such excess or surplus moneys, contained no more than the quota or proportion of land tax payable by such parish to which the same shall relate.

(5.) Every such excess and surplus shall be accounted for and paid over in the due and ordinary course of collection and of receipt and account in like manner as the duties and land tax are required to be accounted for and paid over.

(6.) A collector wilfully detainjng, withholding, or misapplying or refusing or neglecting to account for or disregarding or disobeying any lawful directions given to him in regard to any such excess of or surplus land tax, shall be liable to the same penalties as are provided for the detention, withholding, or misapplication of, or for the refusal or neglect to account for, or for the disregard of or disobedience to any lawful directions given to a collector in regard to any duties or land tax.

(7.) Every such sum of excess of or surplus land tax so paid and accounted for shall be paid into the Bank of England to an account opened in the books of the said Bank, with the Commissioners for the Reduction of the National

Debt, and entitled "The Account of Surplus Land Tax."

(8.) The Board shall cause to be opened and kept in the books of their head office at Somerset House an account with every parish respectively, and in every such last-mentioned account shall be entered the sums of money collected from every such respective parish and paid over and accounted for as such surplus land tax as aforesaid.

(9.) Whenever the amount of such surplus land tax standing to the credit of any parish in any such account as last mentioned shall be sufficient, according to the rules established by law for computing the consideration of money for the redemption of land tax, to redeem the sum of three pounds land tax, or to redeem the whole of the land tax chargeable on such parish if the same shall be less than three pounds, the Board shall certify that fact to the Commissioners for the Reduction of the National Debt, who shall thereupon apply and appropriate in the purchase and cancelling of parliamentary stocks or annuities such sum of the moneys standing in their names to the credit of the said account of surplus land tax as the said Board shall certify to them to be a sufficient consideration, computed according to the rules aforesaid, for the redemption of the amount of land tax mentioned in their certificate as intended to be redeemed thereby.

(10.) Notwithstanding the foregoing provisions of this section, the Land Tax Commissioners for any division in which any such excess of or surplus land tax shall in any year arise may—

(a.) If such excess of or surplus land tax for any parish does not amount to five pounds, allow the collector of land tax for such parish to retain the same, certifying such allowance to the Board on the prescribed form before the collector is required to clear his accounts:

(b.) Before any such excess or surplus is paid over, accounted for, and applied in manner aforesaid, cause to be deducted from the amount of such excess, and to be paid to the respective assessors of land tax of the several parishes in which such excess shall arise, as a remuneration to the said assessors for their trouble in making the assessment to the land tax, such sum of money out of the excess for any such parish as they certify to be a reasonable remuneration to the assessors of such parish, and as the Board shall approve, and subject to such approval.

(11.) On the clearing of his account for any year, every collector of land tax shall make a return in the prescribed form on oath to the Land Tax Commissioners of arrears of land tax which

cannot be recovered by him, and for which he shall claim credit in reduction of the amount of excess of or surplus land tax upon the assessment for such year charged against him in the Commissioners duplicate.

(12.) No collector shall be allowed to insert in any such schedule of arrears of land tax the name of any person as not having paid the land tax unless such collector shall make oath or make and subscribe a solemn affirmation (which said oath or affirmation shall be indorsed and certified on the said schedule)—

- (a.) That the sum for which such person is so returned in default is due and wholly unpaid either to such collector or to any other person for such collector, to the best of his knowledge and belief; and
- (b.) That such person had not goods and chattels sufficient whereon to levy the said sum of land tax within the parish or limits at any time since such sum became payable; and
- (c.) That there were not nor are any goods and chattels or any distress whatever upon the premises charged with the payment of the said sums within set forth, and mentioned to be in arrear, whereby the same or any part thereof might be believed.

(13.) On or before the twenty-fourth day of December following the expiration of every year of assessment the Land Tax Commissioners acting for every division shall certify to the Board an account of the excess of each assessment within their division by the amount of five pounds sterling over and above the quota for such year. Such certificate shall be prepared by the clerk to the said Commissioners on and according to the prescribed form, and shall be by him transmitted to the Board.

## PART VIII.

### PROCEEDINGS AGAINST COLLECTORS.

#### *Failure to raise Duties (England).*

115. (1.) Every surveyor in England, whenever he sees occasion, may report to the Land Tax Commissioners and General Commissioners—

- (a.) In any matter or thing touching the conduct of any collector within their division;
- (b.) In every case where there shall be a failure of assessing or charging the duties in any parish; or
- (c.) Of raising or paying the several sums respectively charged on any person chargeable in such parish; or
- (d.) In the making out or returning any duplicates of assessments by their clerk, or of doing any other act required by this Act or any Tax Act to be done by such clerk;

stating in his report—

- (i.) The particulars of his complaint against such collector or other person acting as aforesaid; and
- (ii.) What in his opinion ought to be done therein.

(2.) Whenever any surveyor shall have reported to the said Commissioners as aforesaid, they shall summon a meeting within a reasonable time after such report, of which meeting the surveyor shall have notice, and shall attend thereat, and assist in the consideration of the measures necessary and expedient to be taken in the execution of the said Acts and this Act.

#### *Examination of Collectors (England).*

116. (1.) In England the Land Tax Commissioners and General Commissioners may, whenever they think expedient, and shall whenever required by the surveyor, call before them the collector of the duties or land tax appointed by them for any parish or group whose accounts for any year are not finally closed, and examine him upon oath or affirmation as to the state of his accounts and collection, and make such order for the payment of the sum found due by such collector, and appoint a time for such payment to the collector of inland revenue as they shall judge necessary.

(2.) The said Commissioners, whenever they shall have received notice of the holding of a receipt for any division, group, or parish, may, and on request made by the surveyor shall, call before them any collector appointed by them for such division, group, or parish, and may, after examination of such collector in manner aforesaid, give such collector a certificate and order of the sum to be paid by him to the collector of inland revenue, which certificate shall be presented and delivered up to the collector of inland revenue by the collector on his attending to make such payment of the moneys by him collected and received.

#### *Revocation of Appointments.*

117. (1.) If delay or failure happens in demanding, receiving, recovering, or paying over the land tax or the duties or moneys through the wilful neglect of a collector, whether appointed by the Land Tax Commissioners and General Commissioners or by the Board, such Commissioners or Board may respectively revoke their appointment of such collector, and appoint a collector in his stead for the remainder of the year, with full power to collect the arrears of the sums then due.

(2.) The said respective Commissioners or Board, whenever necessary, may revoke such last-mentioned appointment, and appoint a collector in like manner from time to time and as often as any such collector shall be guilty of such neglect, provided security be taken, if

required, as in the case of an original appointment, and provided the like security be taken on every such new appointment as has been required to be taken on the appointment of the collector; and

(3.) Such collector so in default shall, when required by the said Commissioners or Board, deliver up to them or in their presence to the collector newly appointed, or to the surveyor, all the certificates of assessments which he was charged to collect, and all books, receipts, and counterfoils, and vouchers of payment, and also shall pay to the collector of inland revenue all sums then in his hands at such time as such Commissioners or Board shall appoint.

#### *Seizure of Estates.*

118. (1.) If a collector fails to pay any land tax or duties or moneys by him received as collector, and detains in his hands, and does not pay or account for the same in manner directed by this Act, the Land Tax Commissioners and General Commissioners, in their respective divisions, may imprison the person, and seize and secure the estate, as well freehold as copyhold, and all other estate, both real and personal, of such collector to him belonging or which shall have descended or come into the hands or possession of his heirs, executors, administrators, or assigns, wheresoever the same can be discovered and found.

(2.) The said Commissioners shall appoint a time for a meeting of the said Commissioners for such division, and cause public notice to be given of the place where such meeting shall be appointed ten days at least before such meeting.

(3.) The said Commissioners of such division present at such meeting, or the major part of them, in case the accounts of such collector be not duly delivered, or the moneys detained by any such collector be not paid or satisfied, according to the directions of this Act, shall sell and dispose of all such estates which shall be for the cause aforesaid seized and secured, or any part of them, to satisfy and pay over to the proper collector of inland revenue the sum that shall not be so accounted for or shall be so detained in the hands of such collector, his heirs, executors, or administrators respectively, together with the reasonable costs and charges of recovering, raising, and paying the same, which costs and charges shall be ascertained and settled by the Commissioners, and the overplus (if any) shall be restored to the collector or the person entitled thereto.

(4.) The said Commissioners acting for the division in which the estate and effects of such collector shall be seized and secured as aforesaid shall make conveyance of all such freehold and copyhold estates respectively, and in like manner assign the leasehold and other personal estate of such collector, and all his right, title, and in-

terest therein at the time of such seizure or at the time of the death of any collector so dying in default as aforesaid to the respective purchasers thereof respectively, by deed indented between any two or more of the said Commissioners.

(5.) Such sales and purchases respectively shall be as effectual and valid to all intents and purposes against such collector, his heirs, executors, and administrators, and all persons claiming under such collector, in like manner as the sale of bankrupts estates of the like nature under and by virtue of the statute relating to bankrupts, or any of them, may be made by deed indented or enrolled or by deed of assignment according to the several natures of such last-mentioned estates: Provided always, that such person or persons to whom any such sale of copyhold lands shall be made shall in like manner as the purchaser of the copyhold estates of bankrupts, before such time as he or they, or any of them, shall enter or take any profit of the said lands or tenements, agree and compound with the lords of the manors of whom the same shall be holden for such fines or incomes as heretofore hath been most usual and accustomed to be yielded or paid therefor; and that upon every such agreement or composition the said lords for the time being, at the next court to be holden at or for the said manors, shall not only grant to the said vendee or vendees, upon request, the same copyhold or customary lands or tenements by copy of court roll of the same manors for such estate or interest as to them shall be so sold, and reserving the ancient rents, customs, and services, but also in the same court admit them tenants of the same copyhold or customary lands as other copyholders of the same manors have been wont to be admitted, and to receive their fealty, suit, or service according to the custom of the court of such manor.

#### *Actions on Collector's Bonds.*

119. (1.) On the trial of an action or suit against the sureties of a collector on a bond entered into, in pursuance of this Act, or on the execution of a writ of inquiry of damages in such action or suit, the production of an account in the handwriting of such collector or signed by him of any sum of money collected or received by him for or on account of the land tax or duties or moneys, or any of them, shall be sufficient proof of the receipt by such collector of every such sum of money therein mentioned on account of the duties given to him in charge for collection; and

(2.) A schedule delivered upon oath or affirmation by such collector in pursuance of this Act or the Tax Acts or Land Tax Acts, and containing or purporting to contain the names of persons who have made default in payment of the land tax or the duties and of the sums remaining in

arrear, shall in any action or suit as aforesaid and upon all other occasions, be sufficient evidence to charge such collector and his sureties respectively with all other sums of money comprised in the duplicate or duplicates given to him in charge to collect, and not included in such schedule or previously accounted for and paid over to the proper officer for receipt; and all such sums not so included in such schedule, or previously accounted for and paid over, shall be deemed to have been collected and received by such collector and to remain in his hands unpaid and in arrear.

120. If in any such action by the Land Tax Commissioners and General Commissioners, they, without their own wilful neglect or default, fail to recover a verdict against the defendant, and costs are awarded to the defendant, or where any action is brought against the said Commissioners in relation to any such bond, and they are adjudged to pay costs to the plaintiff, they shall not be personally liable for such costs, but the same shall be defrayed by an assessment upon the inhabitants of the parish in relation to which the bond which shall have been the subject of the action was given, and which assessment the said Commissioners shall make, sign, and allow as soon as conveniently may be done after such costs shall have been awarded and ascertained; and the said Commissioners shall cause such assessment to be made, collected, levied, and recovered in the same manner as assessments of the land tax and the duties are made, collected, levied, and recovered, and shall cause the costs to be paid over to the person entitled thereto.

#### *Penalty on Collectors.*

121. (1.) Every collector who—

- (a.) Refuses, neglects, or omits upon receiving any of the duties, land tax, or moneys, to give a receipt for the same on the prescribed form, or to fill up and keep remaining in the prescribed receipt book the counterfoil of the receipt; or
- (b.) Gives a receipt for any of the duties, land tax, or moneys otherwise than upon the form prescribed and provided by the Board;

shall for every such offence incur a penalty of ten pounds.

(2.) Every collector who refuses or neglects to deliver on oath or affirmation to the collector of inland revenue at the appointed day of receipt, or to the Land Tax Commissioners and General Commissioners of the division respectively within three days afterwards, a schedule of arrears as by this Act required and prepared in the manner prescribed, shall for every such offence incur a penalty of twenty pounds.

(3.) Every collector who—

- (i.) Refuses or neglects to bring with him to

an appointed receipt and to produce to the collector of inland revenue and surveyor, when by either of them required, his duplicates of assessment, showing the sums collected and received by him, or, instead thereof, certificates signed by the Land Tax Commissioners and General Commissioners, together with an account in writing, signed by him, of all sums of money collected and received for the year of assessment;

- (ii.) Refuses to take the prescribed oath or affirmation to any schedule of arrears delivered by him at a receipt, or to answer any lawful question demanded of him by the collector of inland revenue or surveyor touching the duties, land tax, or moneys, or to sign his answer when reduced into writing; or
- (iii.) Declares in any answer by him made any matter or thing which shall be false;
- (iv.) Advances or lends to any person any or any part of the duties, land tax, or moneys by him collected and received;
- (v.) Applies any or any part of the duties, land tax, or moneys to his own use or purpose;
- (vi.) Deposits or delivers over any or any part of the duties, land tax, or moneys to any person, so that the full sums, or any part thereof to be raised under the Tax Acts, Lands Tax Acts, or this Act, according to the tenour and effect thereof, shall be withheld and not paid over to the collector of inland revenue or to his credit at the times on which the same ought to be paid;
- (vii.) Refuses or neglects upon clearing his account for any of the duties, land tax, or moneys to deliver to the Land Tax Commissioners and General Commissioners by whom he was appointed, or to the Board, the duplicate of the assessment for the year, and tax or duty to which such account relates, together with all the books of receipts and counterfoils furnished for his use in the collection of such taxes and duties;
- (viii.) Refuses or neglects when summoned by notice or called before them to attend the Land Tax Commissioners and General Commissioners of the division, and then answer any lawful questions demanded of him by such Commissioners touching the execution of his office as collector to which he was by them appointed;
- (ix.) Refuses or neglects to produce to the Land Tax Commissioners and General Commissioners of the division all and any certificates of assessments, accounts,

books, and counterfoils of receipts, or vouchers of payments of the land tax or duties, or moneys given or entrusted to him as collector;

- (x.) Refuses or neglects on the revocation of his appointment to attend, if summoned for the purpose, and deliver up to the Land Tax Commissioners and General Commissioners or to the surveyor, or on demand of and by the collector appointed in his stead, to deliver up to such collector all and any certificates of assessments, accounts, books, and counterfoils of receipts, and vouchers of payments of the duties and land tax given, delivered, or entrusted to him and in his possession as collector at the time of the revocation of his appointment,

shall for every such offence incur a penalty of fifty pounds, with all costs and charges, which penalty, with all costs and charges, shall be added to the assessments to which it particularly relates, and shall be levied in like manner as the duties.

(4.) Every collector who refuses or neglects to pay over when and at the date ordered by the said Commissioners any sum of or on account of the duties, land tax, or moneys collected and received and not accounted for by him at the appointed receipt, shall for every such offence incur a

penalty of fifty pounds, with all costs and charges, and a further penalty at the rate of five pounds per centum per annum for the whole sum by him detained, which penalties, with all costs and charges, shall be added to the assessments to which they particularly relate, and shall be levied in like manner as the duties.

(5.) Every collector who—

- (a.) Collects any of the duties, land tax, or moneys by any rate book or duplicate other than such rate book or duplicate as shall be signed and allowed by the said Commissioners;
- (b.) Receives any such duties, land tax, or moneys from any person not charged therewith in such rate book or duplicate;
- (c.) Collects from any person more money than is actually charged on such person in such rate book or duplicate;
- (d.) Does not pay over the whole duties, land tax, and moneys by him collected;
- (e.) Fraudulently alters any such rate book or duplicate after the same has been signed and allowed by the said Commissioners;
- (f.) Refuses or neglects to make a return upon oath as prescribed of persons from whom the duties cannot be collected,

shall for every such offence incur a penalty of one hundred pounds.

#### SCHEDULES.

Sections 5,  
41, 47, 80.

### The FIRST SCHEDULE.

#### ALLOWANCES AND REMUNERATION.

The following allowances and remuneration shall be paid:—

1. To clerks to Commissioners of Income Tax and Inhabited House Duties—

For the careful writing and transcribing all the assessments, duplicates, warrants, certificates, and estreats in due time, and for the due executing all things directed to be done by or under the General Commissioners and the Additional Commissioners, the clerk who shall do the same within the respective times limited by law in that behalf, shall, by warrant under the hands of the General Commissioners of each district respectively, receive from the Board the under-mentioned allowances, viz.:—

- (a.) As regards the income tax, the clerk having borne and sustained all incidental expenses attending the execution of the Income Tax Acts shall have twopence in the pound on so much of the net amount of the sums assessed and charged in the duplicates of assessment for the year after all appeals heard and determined, and all just reductions, abatements, and

discharges made from such assessments and duplicates respectively as will give to such clerk an allowance not exceeding five hundred pounds for any one year, and at the rate of one penny in the pound on the remainder (if any) of the said net amount:

- (b.) As regards the duties on inhabited houses, if the total amount of such allowance for one year, calculated at the rate of one penny farthing in the pound, on the moneys assessed in that year, and paid over to the collector of inland revenue, shall amount to one hundred pounds or upwards, then such clerk shall not be entitled to receive any further or greater allowance than at the rate of one penny farthing in the pound of the said moneys so paid, but if the total amount of the moneys of the said duties received by such collector of inland revenue for one year in any district of Commissioners shall exceed ninety-six thousand pounds, then the clerk of such district shall have an allowance at the rate of one penny farthing in respect of every pound of the said ninety-six thousand pounds, part thereof, and a

further allowance at the rate of one half of one penny farthing for every pound of the said moneys exceeding ninety-six thousand pounds, and if the total amount of such allowance, calculated at the rate of one penny farthing in the pound on the said moneys, shall not amount to one hundred pounds, then such clerk shall be entitled to receive an allowance at the rate of three halfpence in the pound of the moneys so paid, so as that the allowance, calculated as last aforesaid, shall in no case be granted to any greater amount than one hundred pounds per annum.

But the Treasury may—

(i.) Cause a further allowance to be made to any such clerk of any sum not exceeding one penny in the pound on the amount of such part of the gross assessment as shall have been discharged on occasion of claims for exemption or abatement made or allowed under the Income Tax Acts:

(ii.) Direct the allowance and discharge of such actual expenses, or any part thereof, as shall be necessarily incurred by any clerk in the due execution of the Acts relating to the land tax and inhabited house duties where such allowance shall appear to the Board reasonable and proper to be made over and above the allowance by poundage made to any such clerk for the particular year of assessment to which such expenses shall relate:

(iii.) Where the allowances to which any clerk is entitled by virtue of this Act, together with the allowance to which he is entitled by virtue of the Land Tax Acts, if he be also clerk to the Land Tax Commissioners, would exceed the sum of twelve hundred pounds, substitute for those allowances an amount not being less than the sum of twelve hundred pounds, exclusive of necessary office expenses, and the clerk shall be entitled to claim and receive in respect of such allowances such sum only as shall be specified in a certificate of the Board.

2. To assessors of income tax and inhabited house duties:

(a.) The assessor shall have an allowance of one penny halfpenny per pound for what money of the duties shall be paid over by the collector to the collector of inland revenue—

(i.) In respect of any assessment of the inhabited house duties, and of the duties under Schedules A.,

B., and E. of the Income Tax Acts made by every such assessor and allowed by the General Commissioners; and also

(ii.) In respect of any assessment under Schedule D. of the Income Tax Acts made by the Additional Commissioners and allowed by the General Commissioners

for the particular parish or part of the parish for which such assessor may be appointed and shall act.

(b.) A surveyor acting as assessor shall not be entitled to any allowance in respect thereof over and above such allowance as he may receive under the authority of the Treasury as surveyor.

3. To collectors of income tax and inhabited house duties (England):

(a.) Each collector shall have an allowance of one penny halfpenny per pound for what money of the duties he shall pay to the collector of inland revenue.

(b.) The Board may, with the assent of the Treasury, grant to any collector such further allowance as they may deem necessary.

## The SECOND SCHEDULE.

Sections 5,  
16.

### FORMS.

[NOTE.—These forms may be varied by the Board for use in regard to any of the Duties or the Land Tax, where applicable, or other forms prescribed for such purposes.]

#### 1.—ASSESSORS' CERTIFICATE OF ASSESSMENTS.

County of \_\_\_\_\_, district of \_\_\_\_\_.  
ASSESSMENTS of the duties under the respective Schedules (A.) and (B.) of the Act 16 & 17 Vict. c. 34., and of the duties on inhabited houses under the Act 14 & 15 Vict. c. 36., made upon the several persons chargeable with the said duties within the<sup>a</sup> of \_\_\_\_\_ in the said district, for the year ending the 5th day of April 18\_\_\_\_, pursuant to the Acts of Parliament relating to the said duties, duly certified upon [oath or affirmation, *as the case may be*], by the assessors, and allowed according to the directions of the said Acts by the Commissioners, whose names are signed at the end hereof.

[Here follow particulars of assessment in such tabular form as the Board shall prescribe.]

We, the undersigned assessors of the duties on

<sup>a</sup> NOTE.—Where parishes or places have been united for tax purposes all the names should be inserted and described as the "united parishes or places of."

profits arising from property, professions, trades, and offices, and of the duties on inhabited dwelling-houses for the\* of aforesaid, for the year ending the 5th day of April 18 , do hereby certify the foregoing assessments of the duties payable under the respective Schedules (A.) and (B.) of the Act 16 & 17 Vict. c. 34., and under the Act 14 & 15 Vict. c. 36., for the aforesaid, and we do make [oath or affirmation, as the case may be], and declare that in the foregoing assessments we have charged and assessed ourselves, and all other persons who are chargeable with the said duties, or either of them, within the said , and that we have made our said assessments conformably to the provisions of the laws now in force, according to the best of our knowledge and belief.

As witness our hands this      day of  
in the year of our Lord 18 .  
} Assessors.

NOTE.—This certificate must be signed by both assessors.

We, the undersigned Commissioners of the Income Tax and Inhabited House Duties acting in and for the district of aforesaid, do hereby, in pursuance of the Acts of Parliament relating to the duties on profits arising from the said tax and duties respectively, sign and allow the foregoing assessments, the same having been duly verified before us by the above-named assessors, as directed by the Acts of Parliament in that behalf made.

Given under our hands and seals at  
within the said district, this      day of  
in the year of our Lord 18 .  
} Commissioners of the  
Income Tax  
and Inhabited House Duties.

## 2.—COMMISSIONERS' CERTIFICATE OF FIRST ASSESSMENTS.

Under Schedule (D.)

County of , district of .  
ASSESSMENTS of the duties, under Schedule (D.) of the Act 16 & 17 Vict. c. 34., made upon the several persons, corporations, companies, and societies chargeable with the said duties within the\* of , in the said district, for the year ending the 5th day of April 18 , pursuant to the Acts of Parliament relating to the said duties, by the Commissioners whose names are signed at the end hereof.

\* NOTE.—Where parishes or places have been united for tax purposes all the names should be inserted and described as the "united parishes or places of."

[Here follow particulars of assessment in such tabular form as the Board shall prescribe.]

We, the undersigned Additional Commissioners of the Income Tax acting in and for the district of aforesaid, do hereby, in pursuance of the Acts relating to the duties on profits arising from property, professions, trades, and offices, certify the foregoing first assessments of the duties payable under Schedule (D.) of the Act 16 & 17 Vict. c. 34., for the\* , of aforesaid, amounting to the sum of .

Given under our hands and seals at  
within the said district, this      day of  
in the year of our Lord 18 .

} Additional Commissioners of  
the Income Tax.

The foregoing certificate of assessments having been presented to us, the undersigned Commissioners of the Income Tax acting in and for the district of aforesaid, and all appeals against the same having been heard and determined, we do hereby allow and confirm the said assessments.

Given under our hands and seals at  
within the said district, this      day of  
in the year of our Lord 18 .

} Commissioners of the  
Income Tax.

## 3.—ASSESSORS' CERTIFICATE OF RE-ASSESSMENT.

County of , district of .

A RE-ASSESSMENT of the duties chargeable under the respective Schedules (A.) and (B.) of the Act 16 & 17 Vict. c. 34., for granting to Her Majesty duties on profits arising from property, professions, trades, and offices, and of the duties in respect of inhabited dwelling-houses, chargeable under the Act 14 & 15 Vict. c. 36., made upon the several persons chargeable with the said duties within the of in the said district, pursuant to the several Acts of Parliament in that behalf, for raising the sum of , being the amount of an arrear of the said duties which has arisen within the said for the year ending the 5th day of April 18 , by the default of , collector of the said duties for the said for the said year ending as aforesaid, duly verified upon [oath or affirmation, as the case may be,] by the assessors, and allowed, according to the directions of the said Acts of Parliament, by the Commissioners of the Income Tax and Inhabited House Duties acting for the

\* NOTE.—Where parishes or places have been united for tax purposes all the names should be inserted and described as the "united parishes or places of."

said district, whose names are assigned at the end hereof.

[Here follow particulars of re-assessment in such tabular form as the Board shall prescribe.]

We, the undersigned assessors appointed for making the foregoing re-assessment of the duties chargeable under the respective Schedules (A.) and (B.) of the Act 16 & 17 Vict. c. 34., and of the duties upon inhabited dwelling-houses, chargeable under the Act 14 & 15 Vict. c. 36., for the of aforesaid, do hereby certify the foregoing re-assessment of the said duties, and do make [oath or affirmation, as the case may be], and declare that we have charged and assessed ourselves and all other persons who are chargeable with the said re-assessment, and that we have made our re-assessment conformably to the provisions of the laws now in force, according to the best of our knowledge and belief.

Witness our hands this day of in the year of our Lord 18 .

} Assessors.

We, the undersigned Commissioners of the Income Tax and Inhabited House Duties acting in and for the district of aforesaid, do hereby sign and allow the foregoing re-assessment of the duties chargeable under the respective Schedules (A.) and (B.) of the Act 16 & 17 Vict. c. 34., and in respect of inhabited dwelling-houses, under the Act 14 & 15 Vict. c. 36., amounting to the sum of , the same having been duly verified before us by the above-named assessors.

Given under our hands and seals at within the said district, this day of in the year of our Lord 18 .

} Commissioners of the  
Income Tax and Inhabited House Duties.

#### 4.—COMMISSIONERS' CERTIFICATE OF RE-ASSESSMENT. (SCHEDULE D.)

County of , district of .

A RE-ASSESSMENT of the duties chargeable under the Schedule (D.) of the Act 16 & 17 Vict. c. 34., for granting to Her Majesty duties on profits arising from property, professions, trades, and offices made upon the several persons chargeable with the said duties within the of in the said district, pursuant to the several Acts of Parliament in that behalf, for raising the sum of , being the amount of an arrear of the said duties which has arisen within the said for the year ending the 5th day of April 18 , by default of , collector of the said duties for the said for the said year ending as aforesaid.

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[Here follow particulars of re-assessment in such tabular form as the Board shall prescribe.]

We, the undersigned Additional Commissioners of the Income Tax acting in and for the district of aforesaid, do hereby certify the foregoing re-assessment of the duties chargeable under the Schedule (D.) of the Act 16 & 17 Vict. c. 34.

Given under our hands and seals at within the said district, this day of in the year of our Lord 18 .

} Additional Commissioners  
of the Income Tax.

We, the undersigned Commissioners of the Income Tax acting in and for the district of aforesaid, do hereby allow and confirm the foregoing re-assessment of the duties chargeable under the Schedule (D.) of the Act 16 & 17 Vict. c. 34., amounting to the sum of , all appeals against the same having been heard and determined.

Given under our hands and seals at within the said district, this day of in the year of our Lord 18 .

} Commissioners of the  
Income Tax.

#### 5.—COLLECTORS' DUPLICATE OF [first, additional first, or supplementary, as the case may require] ASSESSMENTS.

[For the year 18 .]

County of , district of .

A DUPLICATE of the assessments of the duties under the respective Schedules (A.) and (B.) [or (D.) and (E.) as the case may require] of the Act 16 & 17 Vict. c. 34., and of the duties on inhabited houses, under the Act 14 & 15 Vict. c. 36., made upon the several persons chargeable with the said duties within the of in the said district, for the year ending the 5th day of April 18 , pursuant to the Acts of Parliament relating to the said duties.

[Here follow particulars of assessment in such tabular form as the Board shall prescribe.]

We, the undersigned Commissioners of the Income Tax and Inhabited House Duties acting in and for the district of aforesaid, do hereby sign and allow the foregoing duplicate of the assessments of the duties payable under the respective Schedules (A.) [or (D.) and (E.) as the case may require] and (B.) of the Act 16 & 17 Vict. c. 34., and of the duties on inhabited

\* Where parishes or places have been united for tax purposes all the names should be inserted and described as the "united parishes or places of."

houses, under the Act 14 & 15 Vict. c. 36., amounting in the whole to the sum of .

Given under our hands and seals at  
within the said district, this      day of  
in the year of the Lord 18 .

} Commissioners of the Income  
Tax and Inhabited  
House Duties.

ment thereof, to distrain for the same according to the directions of the said Acts, by virtue of this our warrant, without further authority.

Given under our hands and seals at  
within the said district, this      day of  
in the year of our Lord 18 .

} Commissioners of the Income  
Tax and Inhabited  
House Duties.

#### COLLECTORS' WARRANT.\*

To      and      of      in the district  
of      , in the county of      .

WHEREAS you, the above-named      and  
    , were on the      day      last duly  
nominated and appointed by the Commissioners  
of the Income Tax and Inhabited House Duties  
acting in and for the district aforesaid, in the  
county aforesaid, to be collectors of the duties  
on profits arising from property, professions,  
trades, and offices, and of the duties on inhabited  
houses [or as the case may be], for the      of  
    in the said district, for the year ending  
the 5th day of April 18 .

And whereas, by virtue and in pursuance of the  
powers and authorities of the several Acts of  
Parliament relating to the said duties, we, the  
said Commissioners, have signed and allowed the  
(foregoing) duplicate of the assessments of the  
said duties, chargeable under the respective  
Schedules (A.) and (B.) [or (D.) and (E.) as the  
case may require] of the Act 16 & 17 Vict. c. 34.,  
and of the duties on inhabited houses, under the  
Act 14 & 15 Vict. c. 36., and charged upon the  
several persons mentioned in the foregoing dupli-  
cate within the      aforesaid, for the year  
ending the 5th day of April 18 .

Now we, the said Commissioners, do hereby  
enjoin and require you the above-named col-  
lectors, or either of you, to make demand of the  
several sums contained in the foregoing dupli-  
cate from the parties charged therewith, or at  
the places of their last abode, or on the premises  
charged with the assessment, as the case may  
require, within the time and in the manner ap-  
pointed and directed by the said Acts; and upon  
payment thereof to give acquittances under your  
hands (without taking anything for such acquit-  
tances) unto the several persons who shall pay  
the same; and if any person or persons shall  
refuse to pay the sum or sums charged upon him,  
her, or them, upon demand duly made by you,  
or either of you, then we do hereby enjoin and  
strictly require you, or either of you, for nonpay-

#### 6.—APPOINTMENT OF ASSESSORS FOR MAKING RE-ASSESSMENT OF INCOME TAX.

To      and      , assessors of the duties  
on profits arising from property, professions,  
trades, and offices for the      of      , in the  
district of      , in the county of      .

WHEREAS an arrear of the duties chargeable  
under the      Schedule      of the Act 16 &  
17 Vict. c. 34., for granting to Her Majesty  
duties on profits arising from property, pro-  
fessions, trades, and offices, for the year ending  
the 5th day of April 18 , amounting to the sum  
of      has arisen in the      of      afore-  
said, by the default of      , collector of the  
said duties for the said      , we, the under-  
signed, being Commissioners of the Income Tax  
acting in and for the said district, do hereby, by  
virtue of the Acts of Parliament enabling us in  
this behalf, appoint you the above-named  
and      assessors for making a re-assessment  
within and upon the said      for raising the  
said arrear; and we do hereby strictly enjoin and  
require you and each of you to make a re-asses-  
ment within and upon the said      by charging  
the said sum of      on the amount of the as-  
sessment for the said      made for the said  
duties for the year ending the 5th day of April  
18 , by duly apportioning the amount of such  
arrear amongst the several persons assessed in  
the said last-mentioned assessment to the same  
duties respectively, according to each person's  
assessment thereof, as nearly as the case will  
admit; and in making the said re-assessment  
you are to pursue the like methods, rules, and  
directions by which the original assessment was  
made of the same duties. Hereof you will not  
fail, as you and each of you will answer the  
contrary at your peril.

Given under our hands and seals at  
within the said district, this      day of  
in the year of our Lord 18 .

} Commissioners of the  
Income Tax.

\* This warrant may be printed on the duplicate or be a separate document.

† Where parishes or places have been united for tax purposes all the names should be inserted and described as the "united parishes or places of."

**7.—COLLECTOR'S WARRANT, WHICH MAY BE ISSUED DURING THE PERIOD THE SCHEDULES OF DEFAULTERS REMAIN WITH THE COMMISSIONERS.**

To            and            collectors of the duties herein-after mentioned for the of           , in the district of           , in the county of           .

WHEREAS the Commissioners of the Income Tax acting in and for the before-mentioned district have made and executed the several assessments of the duties on profits arising from property, professions, trades, and offices, for the year ending the 5th day of April 18           , upon the several persons chargeable with the said duties within the           aforesaid, and duplicates of the same have been delivered to you, the above-named collectors of the said duties: And whereas the said Commissioners have received, in pursuance of the Acts of Parliament in that behalf, a certain Schedule in writing, signed and duly sworn to by you the said collectors, whereby the several persons therein named are returned as defaulters, for that the several sums assessed upon them and therein contained have been demanded from and are due and wholly unpaid from the respective persons charged therewith: Now we, the undersigned Commissioners of the Income Tax acting in and for the district aforesaid, do hereby enjoin and require you, or either of you, the above-named collectors to make demand of the several sums mentioned in the said Schedule, and contained in the said assessments, from the parties charged therewith, or at the places of their last abode, or on the premises charged with the assessment, as the case may require, and upon payment thereof to give acquittances under your hands unto the several persons who shall pay the same; and if any person or persons shall refuse to pay the sum and sums charged upon him, her, or them, upon demand duly made by you, or either of you, then we hereby enjoin and strictly require you, or either of you, for non-payment thereof, to distrain for the same, according to the directions of the said Acts, by virtue of this our warrant, and that you return to us the amount and particulars of the several sums received by you on the           day of           now next, at the usual place of meeting, namely, at           , in the said district.

Given under our hands and seals at           , in the said district, the           day of           in the year of our Lord 18           .

} Commissioners of the  
Income Tax.

**8.—CERTIFICATE OF REMOVAL.**

To the Commissioners of the Income Tax and Inhabited House Duties acting within and for the district of           , in the county of           .

WE, the undersigned Commissioners of the Income Tax and Inhabited House Duties acting within and for the district of           in the county of           , do hereby certify that in and by the           assessments of the duties payable under the Schedule           of the Act 16 & 17 Vict. c. 34., and under the Act 14 & 15 Vict. c. 36., respectively, and subsequent Acts, for the of           in the said district, for the year ending the 5th day of April 18           , now residing in the           of           , in the district of           in the county of           , hath been duly charged and assessed for the under-mentioned duties (that is to say,)

	Inhabited House	
	Income Tax.	Duties.
N.B.†		‡

Total £

And we do further certify that the said           hath left unpaid the sum of           in respect of the income tax, and the sum of           in respect of the inhabited house duties so charged and assessed as aforesaid, which became due and payable on the first day of January in the year of our Lord 18           , and the said sum now in arrear.

And we, the undersigned Commissioners, do request you, the said Commissioners of the Income Tax and Inhabited House Duties acting within and for the district of           aforesaid, to raise and levy the said sum of           and           so charged and assessed upon the said           and now in arrear as aforesaid, and to cause the same to be paid and applied according to the direc-

\* First, additional first, or supplementary, as the case may be.

† Here specify the "particulars of the assessment," viz., the Schedule under which the duty is charged—description of property, profits, or sources of income, to which the assessment applies, and whether on own return or estimate. If the arrear be under Schedule A., the name and address of the owner of the premises should be stated, and if the assessment be in respect of a house in the metropolis or a large town, the certificate should set forth the street and number of the house.

‡ State whether the amount is included in Commissioners' Schedule of defaulters.

tions of the several Acts of Parliament for raising the said duties.

Given under our hands and seals at  
the said district of this day of  
in the year of our Lord 18

} *Commissioners of the  
Income Tax and  
Inhabited House Duties.*

To and collectors of the duties  
on profits arising from property, profes-  
sions, trades, and offices, and of inhabited  
house duties, for the of , in  
the district of , in the county of .

W<sup>e</sup>, the undersigned Commissioners of the  
Income tax and Inhabited House Duties acting  
within and for the district of aforesaid, do  
hereby authorise and require you, the above-  
named collectors, or either of you, to make due  
demand of and from , the person named in  
the foregoing certificate, of payment of the sum of  
of , in respect of the duties charged and  
assessed upon him, as in the said certificate is  
mentioned, and if he shall refuse or neglect to  
pay the same upon such demand being made,  
then we hereby empower and require you, or  
either of you, to distrain for the same, according  
to the directions of the statute in that behalf,  
by virtue of this our warrant, without further  
authority; and upon receipt of the said sum of  
money, or any part thereof, we hereby direct and  
enjoin you to pay over the same to the collector  
of inland revenue for the county of , to the  
account of , the collectors of the said  
duties for the of for which this shall  
be your sufficient authority.

Given under our hands and seals at  
in the said district of , this  
day of in the year of our Lord  
18 .

} *Commissioners of the Income  
Tax and Inhabited  
House Duties.*

N.B.—As the collector of the parish or place  
where the duties herein certified are assessed and  
due has not collected the same, and as, therefore,  
he is not entitled to any poundage thereon, the  
collector of any other parish or place who shall  
collect the said duties, will, on payment thereof  
to the receiving officer, be allowed the poundage  
to which the first-mentioned collector would have  
been entitled if the duties had been collected by  
him.

#### 9.—WARRANT TO BREAK OPEN.

To and , collectors of the duties  
herein-after mentioned for the of  
in the district of , in the  
county of

WHEREAS in and by the assessments  
of the duties of income tax and the duties on

inhabited houses for the aforesaid for the year  
ending the 5th day of April 18 , of  
hath been duly charged to the said duties in the  
sum of .

And whereas it appears by the oath of  
collector of the said duties appointed for the said  
taken before us, whose hands and seals  
are hereunto subscribed and set, being two of the  
Commissioners of the Income Tax and Inhabited  
House Duties acting in and for the district afore-  
said, that the said sum of hath been duly  
demanded of the said and that he hath re-  
fused and neglected to pay the same, and that  
the same now remains due and unpaid :

And whereas it further appears by the oath  
aforesaid that divers goods and chattels, liable by  
law to be distrained for the said duties, are lying  
and being in a certain house, situate in  
the of in the district and county  
aforesaid, now in the possession of .

These are therefore to authorise and require  
you, the above-named collectors, and either of  
you, calling to your assistance the constable or  
other peace officer within and for the of  
aforesaid, and in the presence of the said  
constable, or other peace officer, to demand en-  
trance into the said house, and in case of resist-  
ance, or neglect or refusal to open the same, to  
break open in the daytime the said house, and  
enter the same, and to distrain therein the said  
goods and chattels, and the distress there found  
to keep by the space of five days, at the costs  
and charges of the said and if the whole  
of the said sum of , together with the said  
costs and charges, be not paid within the said  
five days, then the said distress, having been first  
duly valued and appraised by two of the inhabi-  
tants of the said of , or other sufficient  
persons, to be sold by you, and the overplus, if  
any, of the moneys arising by such sale, after  
paying and deducting the said sum of and  
all costs and charges of taking, keeping, and  
selling the said distress, to be restored to the  
owner thereof.

Given under our hands and seals at  
within the said district, this day of  
in the year of our Lord 18 .

} *Commissioners of the Income  
Tax and Inhabited  
House Duties.*

#### 10.—WARRANT OF COMMITMENT.

To and , collectors of the duties  
herein-after mentioned for the of  
in the district of , in the  
county of , and to the keeper of Her  
Majesty's prison at .

WHEREAS in and by the , assessments  
of the duties payable under the Schedule  
of the Act 16 and 17 Vict. c. 34., for the

, of , in the district of , in the county of , for the year ending the 5th day of April 18 , of , hath been duly charged and assessed to the said duties in the sum of .

And whereas it appears by the oath of , collector of the said duties appointed for the said , of , taken before us, whose hands and seals are hereunto subscribed and set, being two of the Commissioners of the Income Tax acting in and for the district of afore-said, that the said sum of , as and for the duties so charged and assessed as aforesaid, hath been duly demanded of the said and that he hath refused and neglected to pay the sum of part of the said sum of , by the space of ten days after such demand as aforesaid; and it further appears by the oath aforesaid that the said sum of , for the duties charged and assessed as aforesaid, now remains due and unpaid, and that no sufficient distress can or may be found whereby the same may be levied.

Now, therefore, we, the said Commissioners, whose hands and seals are hereunto subscribed and set, do hereby command you, the above-named collectors of the said duties, or either of you, to apprehend the said , and to take him to Her Majesty's prison at , in the said county, and to deliver him to the keeper thereof, together with this warrant; and we do hereby command you, the said keeper, to receive him, the said , into your custody in the said prison, there to be kept without bail until payment shall be made or security to our satisfaction be given for payment of the said sum of , remaining due and unpaid as aforesaid, and also of the further sum of which we, the said Commissioners, do adjudge to be reasonable for the costs and expenses of apprehending the said and conveying him to prison.

Given under our hands and seals at within the said district, the day of in the year of our Lord 18 .

} *Commissioners of the  
Income Tax.*

#### 11.—REVOCATION OF COLLECTOR'S APPOINTMENT.

To , one of the inhabitants of the of , in the district of , in the county of .

WHEREAS by virtue and in pursuance of the powers and authorities of the several Acts of Parliament relating to the duties on profits arising from property, professions, trades, and

offices, and inhabited houses, two of the Commissioners acting in the execution of the said Acts in and for the district aforesaid, did, by their precept, bearing date the day of 18 , nominate and appoint and to be collectors of the said duties for the aforesaid, for the year ending the 5th day of April 18 : And whereas wilful delay and failure hath happened in demanding, receiving, and recovering and paying divers sums of money and duties charged and assessed on the several persons chargeable with the said sums of money and duties, within the said for the year aforesaid, through the default and neglect of the said , one of the collectors of the said duties.

Now we, the undersigned, two of the said Commissioners, do, by virtue and in pursuance of the powers and authorities given by the Acts of Parliament in this behalf, hereby revoke the appointment of the said as such collector as aforesaid; and we do by this, our precept, nominate and appoint you, the above-named , in the place and stead of the said to be collector of the duties and sums of money remaining due and in arrear and uncollected on the duplicates of assessments herewith delivered to you, for the said year ending the 5th day of April 18 , with full power to collect all arrears and sums of money which are now due and unreceived from the parties charged therewith by the said assessments. And we do hereby enjoin and require you immediately to make demand of the several sums contained in the said duplicates from the parties charged therewith, or at the places of their last abode, or on the premises charged with the assessment, as the case may require; and upon payment thereof to give acquittances unto the several persons who shall pay the same; and if any person or persons from whom any of the said duties, or sums of money, or any part thereof, now remain due or unpaid shall refuse to pay the sum and sums charged upon and due and owing from him, her, or them, upon demand made by you, then we hereby enjoin and strictly require you for non-payment thereof, to distrain for the same, according to the directions of the said Acts, by virtue of this our warrant without further authority.

Given under our hands and seals at within the said district, the day of , in the year of our Lord 18 .

} *Commissioners of the Income  
Tax and Inhabited  
House Duties.*

12.—WARRANT TO IMPRISON PERSON AND SEIZE ESTATE OF DEFAULTING COLLECTOR.

To , constable of , in the county of , and to , keeper of Her Majesty's prison at , in the said county.

WHEREAS it appears to us and , whose hands and seals are hereunto subscribed and set, being two of the Commissioners of the Income Tax and the Inhabited House Duties acting for the district of , in the county of , upon the oath of and other sufficient evidence, that , of , a collector of the duties of income tax and the duties in respect of inhabited houses for the of , in the said district, hath, as such collector, collected and received from divers persons within the said the sum of , in respect of the said duties, and the said hath neglected to pay the said sum of money according to the directions of the several Acts of Parliament in that behalf, and that he hath detained and doth now detain the same in his hands.

Now, therefore, we, the said Commissioners whose hands and seals are hereunto subscribed and set, do hereby command you, the above-named constable, to apprehend the said , and him safely to convey to Her Majesty's prison at , in the said county of and to deliver him to the keeper thereof; and we do hereby command you, the said keeper, to receive him, the said , into your custody in the said prison, and there to detain and keep him until payment shall be made of the aforesaid sum of money, or until he shall be otherwise discharged by due course of law; and we do hereby further command you, the said constable, to seize and secure the estate, as well freehold as copyhold, and all other estate, both real and personal, of him the said , to him belonging wheresoever the same can be discovered and found; and if the said shall not pay or satisfy the said sum of money as ought to be done according to the directions of the said several Acts, you are forthwith to give notice to us that we may proceed further as the law directs; and for so doing this shall be to you and each of you a sufficient warrant and authority.

Given under our hands and seals at , in the said district, this day of , in the year of our Lord 18 .

} *Commissioners of the Income Tax and Inhabited House Duties.*

13.—WARRANT TO SELL COLLECTOR'S ESTATE.

of  
WHEREAS by a certain warrant bearing date the day of , in the year of our Lord one thousand eight hundred and , under the hands and seals of and , two of the Commissioners of the Income Tax and Inhabited House Duties acting for the district of , in the county of , reciting that , of , a collector of the duties on profits arising from property, professions, trades, and offices, and the duties in respect of inhabited houses, for the of , in the said district, had, as such collector, collected and received from divers persons within the said the sum of in respect of the said duties, and that the said had neglected to pay the said sum of money, according to the directions of the several Acts of Parliament in that behalf, and that he had detained and did then detain the same in his hands, the said Commissioners, whose hands and seals are subscribed and set to the said warrant, did thereby command one , constable of , in the said county, to seize and secure the estate as well freehold as copyhold, and all other estate, both real and personal, of the said to him belonging, wheresoever the same could be discovered and found.

And whereas by virtue of and in pursuance of the said warrant, the several estates, goods, and chattels belonging to the said mentioned and particularized in the Schedule or inventory hereunto have been seized and secured.

And whereas and , Commissioners as aforesaid, did, in pursuance of the statute in that behalf, appoint the day of at , in the said district, for a meeting of the Commissioners of the Income Tax and Inhabited House Duties for the said district, and did cause public notice to be given of the time and place when and where such meeting was appointed to be held ten days at least before such meeting.

And whereas the said meeting hath been held in pursuance of the said notice, and the said hath not paid or satisfied, as ought to be done, according to the directions of the said Acts, the said sum of money so detained by him as aforesaid.

Now therefore we, whose hands and seals are hereunto subscribed and set, being the major part of the said Commissioners present at the said meeting, do hereby require and empower you, the above-named , to sell and dispose of the said estates, goods, and chattels so seized and secured for the cause aforesaid, to satisfy and pay into the hands of the collector of inland revenue at , the aforesaid sum of money so detained by the said , and remaining unpaid as aforesaid, together with the reasonable

costs and charges of recovering, raising, and paying the same, and for your so doing this shall be your sufficient authority.

Given under our hands and seals at \_\_\_\_\_, in the said district, the \_\_\_\_\_ day of \_\_\_\_\_ in the year of our Lord one thousand eight hundred and \_\_\_\_\_

} *Commissioners of the  
Income Tax and  
Inhabited House Duties.*

said estates, goods, and chattels, to satisfy and pay the said sum of money.

Given under our hands, this \_\_\_\_\_ day of \_\_\_\_\_ in the year of our Lord 18 \_\_\_\_\_

} *Commissioners of Income  
Tax and Inhabited  
House Duties.*

#### 14.—NOTICE OF SEIZURE OF COLLECTOR'S ESTATE.

WHEREAS by a certain warrant, bearing date the \_\_\_\_\_ day of \_\_\_\_\_ in the year of our Lord 18 \_\_\_\_\_, under the hands and seals of two of the Commissioners of Income Tax and Inhabited House Duties acting for the district of \_\_\_\_\_, in the county of \_\_\_\_\_, reciting that \_\_\_\_\_ of \_\_\_\_\_, a collector of the duties of income tax and the duties in respect of inhabited houses, for the \_\_\_\_\_ of \_\_\_\_\_, in the said district, had as such collector collected and received from divers persons within the said \_\_\_\_\_ the sum of \_\_\_\_\_ in respect of the said duties, and that the said \_\_\_\_\_ had neglected to pay the said sum of money, according to the directions of the several Acts of Parliament in that behalf, and that he had detained and did then detain the same in his hands:

The said Commissioners did thereby command the constable of \_\_\_\_\_, to whom the said warrant was directed, to seize and secure the estate, as well freehold as copyhold, and all other estate, both real and personal, of the said \_\_\_\_\_ to him belonging, wheresoever the same could be discovered and found.

And whereas certain estates, goods, and chattels of the said collector have been seized and secured under the said warrant:

Now we the undersigned, \_\_\_\_\_ and \_\_\_\_\_, being two of the said Commissioners acting in the said district, do, in pursuance of the Act of Parliament in that behalf, appoint the \_\_\_\_\_ day of \_\_\_\_\_ for a meeting of the Commissioners of Income Tax, and Inhabited House Duties for the said district, to be held at \_\_\_\_\_ in the said district, at \_\_\_\_\_ of the clock in the \_\_\_\_\_ noon of the said day; and we do hereby give notice that if the said sum of money so due and owing from the said collector be not paid or satisfied, as ought to be done, according to the directions of the Acts in that behalf, the Commissioners present at such meeting, or the major part of them, will sell and dispose of the

#### 15.—(CHARGE.) DUPLICATE OF THE INCOME TAX AND INHABITED HOUSE DUTIES.

THIS DUPLICATE, amounting to \_\_\_\_\_, contains the full amount of the Sums Assessed upon each Parish or Place in the District of \_\_\_\_\_, in the county of \_\_\_\_\_, by virtue of the Acts of Parliament granting to Her Majesty Duties on Profits arising from Property, Professions, Trades, and Offices, and of the duty in respect of Inhabited Dwelling-houses, together with the Christian and Surname of the several Assessors and Collectors, for the Year 18 \_\_\_\_\_ ending 5th day of April 18 \_\_\_\_\_.

Signed, Sealed, and delivered by us, \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_\_.

} *Commissioners of the Income Tax  
and Inhabited House Duty.*

To the Commissioners of Inland Revenue.

[Here follow particulars in such tabular form as the board shall prescribe.]

I do hereby certify that I have examined this duplicate thoroughly, and have compared it with the assessments, and that it is a correct duplicate thereof.

*Surveyor of Taxes.  
Date.*

N.B.—This duplicate should be made out after the time appointed by the Taxes Management Act, 1880, for making supplementary assessments of the said duties, and within one month at farthest after all appeals shall have been heard and determined, and should contain the full amount of the sums given in charge to the collectors and to the collector of inland revenue, and which remains charged in the assessments after the appeals; all discharges subsequent to that period must be included in the Schedules, under the 108th section of the Taxes Management Act, 1880.

16.—COMMISSIONERS' SCHEDULE OF DEFALTERS.

A SCHEDULE made in pursuance of an Act of Parliament passed in the forty-fourth year of the reign of Her present Majesty, intituled the Taxes Management Act, 1880, by the Commissioners of the Income Tax and Inhabited House Duties acting in and for the District of , in the County of , containing the names of certain Persons charged with Duties and Sums of Money in the Assessments made by virtue of the Tax Acts, within and for the several and respective Parishes herein under-mentioned in the said District, for the Year ending the 5th Day of April, 18 , and whose Names have been returned to the said Commissioners by the respective Collectors for the said several and respective Parishes, as Persons who have made default in Payment of the several Duties and Sums of Money set opposite to their respective Names, and charged upon them respectively in the said Assessments, and from whom the respective Collectors have not been able to collect or receive such Duties and Sums of Money for the Causes herein mentioned, and which have been duly verified on the [oath or affirmation as the case may be], of the several and respective Collectors.

[Here follow particulars in such tabular form as the board shall prescribe.]

Given under the hands and seals of us the undersigned, two of the Commissioners of the Income Tax and Inhabited House Duties acting in and for the district aforesaid, at within the said district, the day of in the year of our Lord 18 .

} Commissioners of the Income Tax  
and Inhabited House Duties.

N.B.—A total of each column to be made for each parish or place.

17.—SCHEDULE OF SUMS DISCHARGED FROM ASSESSMENTS RETURNED IN THE DUPLICATES OF CHARGE.

A SCHEDULE containing the Sums discharged from the Assessments of the Duties on Profits arising from Property, Professions, Trades, and Offices, and of the Duty in respect of Inhabited Dwelling-houses for the under-mentioned Parishes or Places in the District of , in the County of , for the Year ending the 5th day of April

18 , pursuant to the Acts of Parliament relating to the said Duties.

[Here follow the particulars in such tabular form as the board shall prescribe.]

We, the undersigned Commissioners of the Income Tax and Inhabited House Duties acting in and for the said district of , in the said county, do hereby certify that the above-mentioned sums, amounting to , have been discharged from the respective assessments for the said parishes by the Commissioners of the Income Tax and Inhabited House Duties acting in and for the said district, in due course of law, upon the returns of the collectors duly verified on oath.

Witness our hands and seals the day of 18 .  
} Commissioners of the Income Tax  
and Inhabited House Duties.

18.—LAND TAX ASSESSMENT, 18 .

In the parish, tithing, or place of , in the division of , in the county of .

AN assessment of the Land Tax for the service of the year one thousand eight hundred and , made in pursuance of the several Acts relating to the Land Tax.

[Here follow the particulars of the assessment in such tabular form as the board shall prescribe.]

We hereby certify the foregoing assessment made by us.

} Assessors.

Signed and sealed by us, the undersigned Commissioners of the Land Tax acting in and for the division of , in the county aforesaid, at within the said division, this day of in the year of our Lord 18 .

} Commissioners.

NOTE.—This certificate must be signed by both assessors.

SUMMARY OF THE FOREGOING ASSESSMENT ON LANDS, TENEMENTS, AND HEREDITAMENTS FOR THE YEAR 18 .

If the assessment on lands, tenements, and hereditaments exceeds the quota, the clerk to the Commissioners must insert at the foot of the

duplicate of the assessments a summary according to the following form.

And the collector must account for any such excess in like manner as for the quota, in order that the excess may be applied as provided by the Taxes Management Act, 1880.

Assessed and exonerated	-	£ s. d.	£ s. d.
Assessed and not exonerated	-		
Total by the assessment		£	
Gross quota or charge on lands, tenements, and hereditaments, by duplicate of charge under 38 Geo. 3. c. 5.	-		
Deduct the amount by which such gross quota has been reduced by the application of surplus land tax	-		
Net quota	-		
Excess on assessment	-	£	
Examined, Signed,			
Clerk.			Date.

#### DIRECTIONS AS TO FORM OF LAND TAX ASSESSMENT.

The clerk to the Commissioners is required to cause the sums assessed to be duly cast up and the total amount of such assessment to be inserted at the foot thereof, and where any such assessment shall contain two or more pages, to cause each page to be duly cast up and the amount inserted at the foot thereof and carried forward so as to form the total on the last page in any such duplicate; and if in any case the total amount of the sums charged by any such assessment shall exceed the actual amount of the said quota or proportion charged and to be raised in any year in any parish, township, or place to which the same shall relate, every such clerk shall insert at the foot of the duplicate of assessment a summary relating to every such assessment last aforesaid, according to the prescribed form annexed to the form of assessment; and if any such clerk shall neglect or refuse to perform the duty hereby required, he shall for every such offence incur a penalty of twenty pounds, to be sued for and recovered as any penalty may be sued for and recovered under this Act.

#### 19.—(CHARGE.) DUPLICATE OF THE LAND TAX, 18 .

A DUPLICATE of the whole Sums assessed upon each Parish or Place in the Hundred or District of , in the County of , for one whole Year, ending the 25th March 18 , pursuant to the several Acts relating to the Land Tax; also of the Christian and Surnames of the several Assessors and Collectors of the same Parishes or Places.

[Here follow the particulars in such tabular form as the board shall prescribe.]

I do hereby certify that I have examined this duplicate thoroughly, and have compared it with the assessments, and that it is a correct duplicate thereof.

Surveyor of Taxes.

Date.

We, whose names are hereunto set and seals affixed, Commissioners for putting in execution the Acts of Parliament above mentioned, do hereby certify that the above duplicate contains the several sums assessed upon each parish or place in the said hundred or district, and do amount together as above mentioned.

Dated this day of 18 .

} Commissioners of  
Land Tax.

To the Commissioners of Inland Revenue.

#### ENDORSEMENT AS REGARDS CROWN PROPERTY.

We, the undersigned, being two of the Commissioners of Land Tax, do hereby certify that the under-mentioned sums have been assessed upon property in the occupation of the Crown, but under authority from the Commissioners of Inland Revenue have not been collected.

} Commissioners of  
Land Tax.

[Here follow the particulars in such tabular form as the board shall prescribe.]

20.—CERTIFICATE OF LAND TAX, 18 .  
EXCESS.

County of , District of

A CERTIFICATE in pursuance of the Taxes Management Act, 1880, to provide for the application of Moneys arising in certain cases of Assessments for Land Tax in Great Britain.

*An Account of the Excess of Each Assessment within the said District by the Amount of 5l. Sterling, over and above the Quota for the Year ended on the 25th March 18 .*

[Here follow the particulars in such tabular form as the board shall prescribe.]

We , of the Commissioners acting in the execution of the Acts relating to the land tax within and for the said district, do hereby certify that the above account and statement are correct.

Witness our hands this day of 18 .  
To the Commissioners of  
Inland Revenue. }

21.—CERTIFICATE TO THE HIGH COURT OF  
THE NAMES OF COLLECTORS WHO HAVE  
MADE DEFAULT IN ACCOUNTING FOR THE  
DUTIES AND LAND TAX.

Exhibited before me as the certificate  
referred to in the annexed affidavit  
of sworn this day of  
18 .

INCOME TAX, INHABITED HOUSE }  
DUTIES, AND LAND TAX, 18 . }

IN THE HIGH COURT OF JUSTICE.

*Exchequer Division.*

To the Right Honourable the Lord Chief Baron of the Exchequer Division of the High Court of Justice, and to the Honourable the rest of the Barons of the same Division.

I, of , collector of inland revenue, receiver of the duties on profits arising from property, professions, trades, and offices, the duties on inhabited houses, and of the land tax, charged and assessed in the parishes and places herein-after mentioned, by virtue of the several Acts of Parliament in that behalf, do hereby humbly certify to the Barons of the Exchequer Division of the High Court of Justice in pursuance of the several statutes in this behalf made and provided, that the several and respective times and places mentioned and described against the name of each division in the Schedule hereunto subjoined, were by me appointed according to the directions of the statutes in that case made and provided, for payment to me, as such collector of inland revenue and receiver as aforesaid, of the said duties and the land tax assessed and charged

within the several parishes and places, and within the respective divisions mentioned in the said Schedule, for the year ending on the twenty-fifth day of March and the fifth day of April 18 , respectively, and which are by the said statutes directed to be collected or levied by the several collectors of the duties and land tax on or before the first day of January now last past; and that I, the said collector of inland revenue, did attend at the said several and respective times and place so appointed as aforesaid for the purpose of receiving the said duties and tax, and that the several collectors of the said duties and tax for the said several parishes and places within the said divisions respectively did then and there make default in paying or accounting for the said duties and tax given to them in charge for the said parishes and places respectively, in the several sums mentioned in the said Schedule, and did then and there neglect and wholly make default in delivering to me, the said collector of inland revenue, a Schedule in writing signed by such collectors respectively, containing the Christian and Surname of each person making default in payment of the said duties and tax and the respective sums then in arrear from each such defaulter, with an affidavit subscribed and made according to the directions of the statutes in that case made and provided, contrary to the form of the said statutes.

And I, the said collector of inland revenue, in pursuance of the several statutes in this behalf, do hereby further humbly certify that the said Schedule hereunto subjoined doth also contain the names of the several collectors in default as aforesaid, and of the several parishes and places in which default has been made as aforesaid, and the divisions where such failure hath happened and the amounts of the duties and tax which remain unpaid or unaccounted for by the said collectors respectively, to the best of my knowledge, and as I verily believe.

Given under my hand this day of  
in the year of our Lord 18 .  
Witness

SCHEDULE to which the foregoing Certificate doth refer, containing the Names of Collectors who have not paid or duly accounted, by the Delivery of Schedules of Defaulters, for the Full Amount of the Duties on Profits arising from Property, Professions, Trades, and Offices, the Duties on Inhabited Houses, and the Land Tax, for the Year ending the Twenty-fifth day of March and the Fifth day of April 18 respectively.

[Here follow the particulars in such tabular form as the board shall prescribe.]

Sections 4, 5, 7.

## The THIRD SCHEDULE.

Enactments repealed.

[NOTE.—Portions of Acts which have already been specifically repealed are in some instances included in the repeal in this Schedule in order to preclude henceforth the necessity of looking back to previous Acts.]

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|--------------------|---|--|
| 43 Geo. 3. c. 99.  | - | An Act for consolidating certain of the provisions contained in any Act or Acts relating to the duties under the management of the Commissioners for the Affairs of Taxes, and for amending the same.  |
| 43 Geo. 3. c. 150. | - | An Act for consolidating certain of the provisions contained in any Act or Acts relating to the duties under the management of the Commissioners for the Affairs of Taxes; and for amending the said Acts so far as the same relate to that part of Great Britain called Scotland.   |
| 43 Geo. 3. c. 161. | - | An Act for repealing the several duties under the management of the Commissioners for the Affairs of Taxes, and granting new duties in lieu thereof; for granting new duties in certain cases therein mentioned; for repealing the duties of excise on licenses, and on carriages constructed by coachmakers, and granting new duties thereon, under the management of the said Commissioners for the Affairs of Taxes; and also new duties on persons selling carriages by auction or on commission;<br>in part; namely,—<br>Sections sixteen, twenty-four, fifty, fifty-one, fifty-three, fifty-four, fifty-six to fifty-eight inclusive, sixty, sixty-nine, seventy, seventy-two, seventy-six, seventy-eight, and eighty. |
| 45 Geo. 3. c. 71.  | - | An Act to amend the several laws relating to the duties under the management of the Commissioners for the Affairs of Taxes.  |
| 45 Geo. 3. c. 95.  | - | An Act to amend so much of an Act of the forty-third year of His present Majesty, for consolidating certain of the provisions of the Acts relating to the duties in Scotland under the management of the Commissioners for the Affairs of Taxes, as relates to the appointment of assessors and sub-collectors, and the notices required to be delivered to persons assessed to the said duties.   |
| 48 Geo. 3. c. 55.  | - | An Act for repealing the duties of assessed taxes, and granting new duties in lieu thereof, and certain additional duties to be consolidated therewith; and also for repealing the stamp duties on game certificates, and granting new duties in lieu thereof, to be placed under the management of the Commissioners for the Affairs of Taxes;<br>in part; namely,—<br>Section seven.   |
| 48 Geo. 3. c. 141. | - | An Act to amend the Acts relating to the duties of assessed taxes, and of the tax upon the profits of property, professions, trades, and offices, and to regulate the assessment and collection of the same;<br>in part namely,—<br>Section one, No. 1 Rules to No. 5 Rules inclusive, sections four, five, six, and thirteen.   |
| 50 Geo. 3. c. 105. | - | An Act to regulate the manner of making surcharges of the duties of assessed taxes, and of the tax upon the profits arising from property, professions, trades, and offices, and for amending the Acts relating to the said duties respectively.   |
| 52 Geo. 3. c. 95.  | - | An Act to amend and regulate the assessment and collection of the assessed taxes, and of the rates and duties on profits arising from property, professions, trades, and offices in that part of Great Britain called Scotland.  |
| 55 Geo. 3. c. 161. | - | An Act to amend and render more effectual an Act of the fifty-second year of His present Majesty, to amend and regulate the assessment and collection of the assessed taxes, and of the rates and duties on profits arising on property, professions, trades, and offices, in that part of Great Britain called Scotland.  |

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| 1 & 2 Geo. 4. c. 113. - | An Act to continue several Acts for the relief of persons compounding for assessed taxes from an annual assessment, for a further term; and to amend the Acts relating to assessments and compositions of assessed taxes.   |
| 3 Geo. 4. c. 88. -      | An Act to amend the laws relating to the land and assessed taxes, and to regulate the appointment of receivers general in England and Wales.  |
| 6 Geo. 4. c. 7.         | An Act for the further repeal of certain duties of assessed taxes, and for granting relief in the cases therein mentioned;<br>in part; namely,—<br>Section eleven.  |
| 6 Geo. 4. c. 32. -      | An Act to provide for the application of moneys arising in certain cases of assessments for land tax in Great Britain.  |
| 1 & 2 Will. 4. c. 18. - | An Act for transferring the duties of receivers general of the land and assessed taxes to persons executing the offices of inspectors of taxes, and for making other provisions for the receipt and remittance of the said taxes.   |
| 4 & 5 Will. 4. c. 60. - | An Act to amend the laws relating to the land and assessed taxes, and to consolidate the boards of stamps and taxes;<br>in part; namely,—<br>Sections one, six, seven, eleven, twelve, thirteen, fourteen, and fifteen.   |
| 5 & 6 Will. 4. c. 20. - | An Act to consolidate certain offices in the collection of the revenues of stamps and taxes, and to amend the laws relating thereto;<br>in part; namely,—<br>Sections six, seven, ten to twenty-one inclusive.  |
| 5 & 6 Will. 4. c. 64. - | An Act to alter certain duties of stamps and assessed taxes, and to regulate the collection thereof;<br>in part; namely,—<br>Sections ten to thirteen inclusive.  |
| 6 & 7 Will. 4. c. 65. - | An Act for granting relief from the duties of assessed taxes, and on stage carriages, in certain cases, and to regulate the charging of the duty payable for taking or killing game in Great Britain: and to provide for the collection of certain local taxes in Scotland;<br>in part; namely,—<br>Sections ten to twelve inclusive. |
| 1 Vict. c. 61. -        | An Act to extend an exemption granted by an Act of the last session of Parliament from the duties of assessed taxes, in respect of certain carriages with less than four wheels; and to amend the laws relating to the said duties;<br>in part; namely,—<br>Section three.  |
| 5 & 6 Vict. c. 37. -    | An Act to continue until the fifth day of April one thousand eight hundred and forty-four compositions for assessed taxes, and to amend the laws relating to the land and assessed taxes;<br>in part; namely,—<br>Section seven.  |
| 6 & 7 Vict. c. 24. -    | An Act to continue until the fifth day of April one thousand eight hundred and forty-five compositions for assessed taxes, and to amend the laws relating to the land and assessed taxes, and also the laws relating to the duties on profits arising from property, professions, trades, and offices.                                |
| 7 & 8 Vict. c. 46. -    | An Act to continue until the fifth day of April one thousand eight hundred and forty-six compositions for assessed taxes, and to amend certain laws relating to duties under the management of the Commissioners of Stamps and Taxes.   |
| 9 & 10 Vict. c. 56. -   | An Act to provide forms of proceedings under the Acts relating to the duties of assessed taxes, and the duties on profits arising from property, professions, trades, and offices in England.   |
| 17 Vict. c. 1. -        | An Act to explain and amend an Act of the last session relating to the duties of assessed taxes, and to authorise justices of the peace in Ireland to administer oaths required in matters relating to income tax;<br>in part; namely,—<br>Section five.  |

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| 17 & 18 Vict. c. 85. -  | An Act for better securing the collecting and accounting for the land tax, assessed taxes, and income tax by the collectors thereof.   |
| 19 & 20 Vict. c. 80. -  | An Act to grant relief in assessing the income tax on lands in Scotland in respect of certain public burdens charged thereon; to alter and regulate the allowances to clerks to the Commissioners of Income Tax; and to amend the laws relating to the land, assessed, and income taxes, and the redemption and purchase of the land tax;<br>in part; namely,—<br>Sections two and four. |
| 20 & 21 Vict. c. 28. -  | An Act to amend the laws relating to the payment of the land and assessed taxes and property and income tax in Scotland;<br>in part; namely,—<br>Section two.  |
| 24 & 25 Vict. c. 91. -  | An Act to amend the laws relating to the Inland Revenue;<br>in part; namely,—<br>Sections 37 to 45 inclusive.  |
| 25 Vict. c. 22. -       | An Act to continue certain duties of Customs and Inland Revenue for the service of Her Majesty, and to grant, alter, and repeal certain other duties;<br>in part; namely,—<br>Sections forty-two to forty-five inclusive.  |
| 26 & 27 Vict. c. 33. -  | An Act for granting to Her Majesty certain duties of Inland Revenue, and to amend the laws relating to the Inland Revenue;<br>in part; namely,—<br>Section twenty-three.   |
| 27 & 28 Vict. c. 56. -  | An Act for granting to Her Majesty certain stamp duties, and to amend the laws relating to the Inland Revenue;<br>in part, namely,—<br>Sections fifteen and nineteen.  |
| 28 Vict. c. 30. -       | An Act to grant certain duties of Customs and Inland Revenue;<br>in part; namely,—<br>Section five.  |
| 29 & 30 Vict. c. 64. -  | An Act to amend the laws relating to the Inland Revenue;<br>in part; namely,—<br>Sections seventeen and eighteen.  |
| 30 & 31 Vict. c. 90. -  | An Act to alter certain duties and to amend the laws relating to the Inland Revenue;<br>in part; namely,—<br>Section twenty-six.   |
| 32 & 33 Vict. c. 14. -  | An Act to grant certain duties of Customs and Inland Revenue, and to repeal and alter other duties of Customs and Inland Revenue;<br>in part; namely,—<br>Part II., sections five to eleven inclusive.   |
| 33 Vict. c. 4. -        | Income Tax Assessment Act, 1870.   |
| 33 & 34 Vict. c. 32. -  | The Customs and Inland Revenue Act, 1870;<br>in part; namely,—<br>Part V. (section sixteen.)   |
| 34 & 35 Vict. c. 103. - | The Customs and Inland Revenue Act, 1871;<br>in part; namely,—<br>Section thirty.  |
| 36 Vict. c. 8. -        | An Act to make provision for the assessment of income tax, and as to assessors in the metropolis;<br>in part, namely,—<br>Sections one and two.  |
| 36 Vict. c. 18. -       | The Customs and Inland Revenue Act, 1873;<br>in part; namely,—<br>Sections six to nine inclusive.  |
| 37 Vict. c. 16. -       | The Customs and Inland Revenue Act, 1874;<br>in part; namely,—<br>Sections eight to ten inclusive.   |

41 Vict. c. 15.	-	The Customs and Inland Revenue Act, 1878; in part; namely,— Sections fourteen and fifteen.
42 & 43 Vict. c. 21.	-	The Customs and Inland Revenue Act, 1879; in part; namely,— Sections nineteen to twenty-five inclusive.

## The FOURTH SCHEDULE.

Sections 5, 7.

Enactments in which a reference to this Act is to be substituted.

38 Geo. 3. c. 5.	-	An Act for granting to His Majesty an aid by a land tax to be raised in Great Britain for the service of the year one thousand seven hundred and ninety-eight.
48 Geo. 3. c. 161. [ss. 10, 15, 17, 55, 59, 62, and 77.]	-	An Act for repealing the several duties under the management of the Commissioners for the Affairs of Taxes, and granting new duties in lieu thereof; for granting new duties in certain cases therein mentioned; for repealing the duties of excise on licenses, and on carriages constructed by coach-makers, and granting new duties thereon, under the management of the said Commissioners for the Affairs of Taxes; and also new duties on persons selling carriages by auction or on commission.
48 Geo. 3. c. 55. [Sch. A.]	-	An Act for repealing the duties of assessed taxes, and granting new duties in lieu thereof, and certain additional duties to be consolidated therewith; and also for repealing the stamp duties on game certificates, and granting new duties in lieu thereof, to be placed under the management of the Commissioners for the Affairs of Taxes.
57 Geo. 3. c. 25. [ss. 1, 2, 3, and 4.]	-	An Act to explain and amend an Act made in the forty-eighth year of His present Majesty, for repealing the duties of assessed taxes, and granting new duties in lieu thereof; and to exempt such dwelling-houses as may be employed for the sole purpose of trade, or of lodging goods, wares, or merchandize from the duties charged by the said Act (23rd May 1817).
5 Geo. 4. c. 44. [s. 4.]	-	An Act for allowing persons to compound for their assessed taxes for the remainder of the periods of composition limited by former Acts, and for granting relief in certain cases.
4 & 5 Will. 4. c. 60. [ss. 2, 5, 8, and 9.]	-	An Act to amend the laws relating to the land tax, and to consolidate the boards of stamps and taxes.
5 & 6 Will. 4. c. 20. [ss. 4, 5, 8, and 9.]	-	An Act to consolidate certain offices in the collection of the revenues of stamps and taxes, and to amend the laws relating thereto.
6 & 7 Will. 4. c. 28.	-	An Act to enable persons to make deposits of stock or Exchequer bills in lieu of giving security by bond to the Postmaster General, and Commissioners of Land Revenue, Customs, Excise, Stamps, and Taxes.
5 & 6 Vict. c. 35.	-	The Income Tax Act, 1842.
5 & 6 Vict. c. 37. [ss. 3, 4, 5, and 6.]	-	An Act to continue until the fifth day of April one thousand eight hundred and forty-four compositions for assessed taxes; and to amend the laws relating to the land and assessed taxes.
12 Vict. c. 1.	-	An Act to consolidate the Board of Excise, and Stamps, and Taxes into one Board of Commissioners of Inland Revenue, and to make provision for the collection of such revenue.
16 & 17 Vict. c. 34.	-	The Income Tax Act, 1853.
23 Vict. c. 14.	-	An Act for granting to Her Majesty duties on profits arising from property, professions, trades, and offices.
29 Vict. c. 36. [s. 8.]	-	An Act to grant, alter, and repeal certain duties of Customs and Inland Revenue, and for other purposes relating thereto.
34 & 35 Vict. c. 103. [s. 31.]	-	The Customs and Inland Revenue Act, 1871.
41 Vict. c. 15. [ss. 12, 13, and 16.]	-	The Customs and Inland Revenue Act, 1878.

## CHAP. 20.

*Inland Revenue Act, 1880.*

## ABSTRACT OF THE ENACTMENTS.

1. *Short Title.*
2. *Interpretation of terms.*

## PART I.

## MALT.

*Repeal of Duties on Malt and Provisions as to Malt in Stock.*

3. *Repeal of excise duties on malt, &c.*
4. *Customs duties on malt, &c. to cease.*
5. *Allowance on malt in stock.*
6. *Rules to be observed by malt trader on claiming allowance.*
7. *Mode of payment of allowance.*
8. *Officer may enter premises of malt trader.*
9. *Malt traders who have sold malt as duty paid to deduct or repay the allowance.*

## PART II.

*Brewers and Excise Duty on Beer.*

10. *Brewers licence.*
11. *Excise duty on beer.*
12. *Equivalent of "bushel of malt" in corn or sugar, and definition of expression.*
13. *Regulations as to charge of duty.*
14. *Mode of ascertaining gravity and quantity.*
15. *Mode of ascertaining original gravity.*
16. *Payment of duty.*
17. *Power to distrain for duties in arrear.*
18. *Loss by fire, &c.*

*As to Brewers for Sale.*

19. *Certain persons to be deemed brewers for sale.*
20. *A brewing book to be delivered to brewers for sale and provisions to be observed in relation thereto*
21. *Marking of vessels and rooms and positions of vessels.*
22. *Entry of premises.*
23. *Provisions as to operations in course of brewing.*
24. *Provision for case of excess in gravity of worts.*
25. *Provisions as to the separation and the mixing of brewings.*
26. *Power for officer to take samples.*
27. *Penalty for concealing worts or beer, or adding sugar thereto after duty charged.*
28. *Brewer to provide scales, weights, ladders, &c.*
29. *Power of entry and examination by officers.*
30. *Power to enter and search for concealed pipes, &c.*
31. *Obstruction of officers.*

*As to Brewers other than Brewers for Sale.*

32. *A brewing paper to be delivered to brewers other than brewers for sale for the purpose of entries therein.*
33. *Provisions as to charge and payment of duty.*
34. *Beer brewed to be for domestic use.*
35. *Power of entry.*

*Drawback on Beer.*

36. *Drawback on beer exported.*
37. *Provisions as to the drawback.*
38. *Samples to ascertain gravity of beer for export.*
39. *As to debenture for payment of drawback.*

## PART III.

*Licences for the Sale of Liquors by Retail.*

40. *Meaning of terms.*
41. *Alteration of the duties on certain excise licences.*
42. *Duties on licences for the retailing of beer and wine.*
43. *Alteration of duties on licences to retailers of spirits.*
44. *Extension of six-day and early closing licences to the United Kingdom.*
45. *Duties on licences for the sale of liquors and tobacco in boats.*

*Supplementary.*

46. *Powers and provisions to be applied to Excise duties, drawbacks, and licences under this Act.*
47. *Construction of term "exciseable liquors" in billiard licence.*
48. *Saving rights under certain charters.*
49. *Repeal of enactments in second schedule.*

## PART IV.

*Income Tax.*

50. *Grant of additional duties of income tax.*
51. *Provisions for securing additional duties on dividends, &c., and as to right of deduction.*
52. *Relief to owner-occupiers of land.*

## PART V.

*Stamps.*

53. *Composition for stamp duty on transfers of debenture and other stocks of municipal corporations.*
54. *Amendment of existing Acts as to composition for stamp duty.*
55. *Application of money received for composition to the reduction of the National Debt.*
56. *Stamp on letter of renunciation may be adhesive.*
57. *The returns of certain banking companies need not be advertised.*

## SCHEDULES.

An Act to repeal the duties on Malt, to grant and alter certain duties of Inland Revenue, and to amend the Laws in relation to certain other duties.

(12th August 1880.)

Most Gracious Sovereign,

We, Your Majesty's most dutiful and loyal subjects, the Commons of the United Kingdom of Great Britain and Ireland, in Parliament assembled, towards raising the necessary supplies to defray Your Majesty's public expenses, and making an addition to the public revenue, have freely and voluntarily resolved to give and grant unto Your Majesty the several duties herein-after mentioned, and do therefore most humbly beseech Your Majesty that it may be enacted; and be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as the Inland Revenue Act, 1880.

2. In this Act each of the following terms shall have the meaning assigned to it by this section, unless it is otherwise expressly provided, or there is something in the subject or context inconsistent therewith:

"Person" includes a body of persons, whether corporate or unincorporate.

"Malt trader" means and includes a maltster or maker of malt, a dealer in malt, a roaster of malt, a brewer of beer for sale, and a vinegar maker.

"Beer" includes ale, porter, spruce beer, and black beer, and any other description of beer.

"Brewer" means a brewer of beer.

"Sugar" means any saccharine substance, extract, or syrup, and includes any material capable of being used in brewing except malt or corn.

"Commissioners" means Commissioners of Inland Revenue.

"Collector" means the collector of Inland Revenue for the collection in which the premises of a brewer are situate, and includes a person acting as such collector.

"Officer" means officer of Inland Revenue.

"Proper officer" means the officer of the division or ride in which the premises of a brewer are situate, and includes a person acting as such officer, and also any officer superior in matters of excise to such officer.

"Prescribed" and "approved" mean respectively prescribed or approved by the Commissioners.

## PART I.

## MALT.

*Repeal of Duties on Malt and Provisions as to Malt in Stock.*

3. On the first day of October one thousand eight hundred and eighty, the following duties of excise shall cease to be charged and payable; (that is to say,)

The duties on malt;

The duty on sugar used by any brewer of beer for sale in the brewing or making of beer, or in the preparation therefrom of any liquor or substance to be used as colouring in the brewing or making of beer;

The duties on licences to be taken out by—

A maltster or maker of malt;

A roaster of malt;

A dealer in roasted malt; and

A brewer of beer for sale;

And the drawbacks of excise now payable on malt and beer shall cease to be allowed.

4. On and after the first day of October one thousand eight hundred and eighty the duties of customs on the following articles, viz., malt, vinegar and pickles preserved in vinegar, shall cease and determine. And the prohibition contained in the forty-second section of the Customs Consolidation Act, 1876, so far as respects extracts, essences, or concentrations of malt, shall on that day cease and be removed.

5. There shall be paid or allowed to every malt trader for all dry unground malt produced to, and taken account of by, the proper officer, and the quantity thereof ascertained between the twenty-seventh and thirtieth days of September one thousand eight hundred and eighty, both days inclusive, as his stock and in his custody and possession, and for which duty shall have been paid or charged, the several allowances and sums of money following; (that is to say,)

For every bushel of such malt made in England from barley, or any other corn, two shillings and sevenpence, with five per centum thereon;

For every bushel of such malt made in Scotland or Ireland from barley, or any other corn, except bear or bigg, two shillings and sevenpence, with five per centum thereon;

And for every bushel of such malt made in Scotland or Ireland from bear or bigg only, without any mixture of barley or any other corn therewith, two shillings, with five per centum thereon:

Provided, that, from the quantity of all brown or porter malt, and roasted or black malt, there shall be deducted twenty per centum for the swell and increase thereof over the quantity of such malt charged with duty; but if such malt

shall be screened and cleaned, there shall be deducted fifteen per centum only, and from all other unscreened or partially screened malt there shall be deducted five per centum, and the allowance shall be computed and paid or allowed only on the remaining quantity of such malt after making such deductions respectively.

6. (1.) Every malt trader claiming allowance in respect of any malt must, in order to entitle him to the allowance, observe the following rules:—

(a.) He must give notice in writing to the proper officer three days previously to the said twenty-seventh day of September one thousand eight hundred and eighty, of his name and place of abode, the description of the business carried on by him as a malt trader, and the place where the malt is deposited, and whether the malt is fully screened or otherwise:

(b.) The malt must be completely dried and finished:

(c.) Before the said twenty-seventh day of September one thousand eight hundred and eighty the malt must be placed so as to enable the officer conveniently to gauge the same and ascertain the quantity thereof:

(d.) In case any corn shall be in operation for making into malt at any time between the said twenty-seventh and thirtieth days of September one thousand eight hundred and eighty, both inclusive, and shall be actually made into malt, dried and finished, before the time when the officer shall first take an account of the malt in the stock of the malt trader, he shall be entitled to claim allowance in respect of such malt upon giving twelve hours previous notice in writing to the proper officer, specifying the quantity of such malt, and the place where the same is deposited, and whether it is fully screened, or otherwise; and all such malt shall be kept separate from all other malt, and so as to enable the officer conveniently to gauge the same and take an account thereof:

(e.) The malt trader shall not alter the position of any malt in respect of which an allowance is claimed or remove the same or any part thereof until after the said thirtieth day of September one thousand eight hundred and eighty, and after the officer shall have gauged the same and taken an account thereof.

(2.) If any licensed brewer shall be desirous of making use of any malt belonging to him in

respect of which an allowance has been claimed, he may do so upon giving to the proper officer twenty-four hours previous notice in writing specifying the quantity intended to be used.

(3.) If from any inevitable accident or unforeseen circumstance a malt trader shall be prevented from receiving into his stock, before the said twenty-seventh day of September one thousand eight hundred and eighty, and in time to enable him to comply with the foregoing rules, any malt which shall have been delivered to any common carrier to be conveyed to such malt trader within seven days previously to the said last-mentioned day, the Commissioners may, upon proof to their satisfaction of the facts and that no fraud has been committed or intended with regard to such malt, grant to such malt trader the allowance in respect thereof subject to such regulations as they may make in that behalf.

7. (1.) When an account has been finally taken of any malt the proper officer shall give to the malt trader a certificate in the prescribed form, specifying the quantity of the malt for which he shall be entitled to an allowance, and the amount of such allowance.

(2.) Upon the production of the certificate to the collector with a declaration made by the malt trader before a justice of the peace, or such collector, stating as follows :

- (a.) That all duties have been paid or charged in respect of the malt specified in the certificate ;
- (b.) That no part of such malt has been taken account of more than once for the purpose of obtaining an allowance ;
- (c.) That the malt is of the respective kinds mentioned in the certificate, and was at the time specified therein in the custody or possession of such malt trader as his property, or for the use of some other malt trader ;

- (d.) That the statements in the certificate are true, and that no fraud was practised upon the officer taking the account,

the collector shall pay to the malt trader the sum specified in the certificate on or within six days after the twentieth day of November one thousand eight hundred and eighty, if the duties upon such malt have been paid, or shall cancel any charge which has been made in respect of the said malt, if the duties have not been paid.

(3.) If any person shall knowingly make any alteration in any certificate, or make use, or attempt to make use, of any untrue certificate, or shall make any false statement in any such declaration, he shall incur a fine of five hundred pounds.

8. (1.) An officer may at any time in the day-

time, between the said twenty-seventh and thirtieth days of September one thousand eight hundred and eighty, both inclusive, enter every house or other place where any malt, in respect of which an allowance has been claimed, is deposited, and inspect and examine the same.

(2.) Every malt trader who shall claim allowance shall, in order to entitle him thereto, with his servants and workmen, whenever required by an officer, aid and assist in the examination, gauging, measuring, and taking account of the malt.

(3.) If any person shall obstruct or hinder an officer in the execution of any of his powers in relation to malt subject to allowance, or shall practise any fraud or contrivance with intent to deceive an officer in taking any such account as aforesaid, or whereby Her Majesty may be defrauded, he shall for every such offence incur a fine of two hundred pounds, and all malt in respect of which any such offence is committed shall be forfeited.

9. Every malt trader who shall have sold or delivered, or shall have contracted to sell or deliver, any malt as duty paid, but in respect of which an allowance is granted under this Act, shall deduct from the purchase money, or if the purchase money has been paid, shall repay, the amount of any allowance which may be granted to such malt trader in respect of such malt.

## PART II.

### *Brewers and Excise Duty on Beer.*

10. (1.) On and after the first day of October one thousand eight hundred and eighty, there shall be granted and paid for the use of Her Majesty, her heirs and successors, the following duties of excise on licences to be taken out annually by brewers in the United Kingdom; (that is to say,)

	£	s.	d.
On a licence to be taken out by a brewer for sale -	-	-	1 0 0
On a licence to be taken out by any other brewer -	-	-	0 6 0

(2.) Every such licence shall be in such form as the Commissioners shall direct, shall, whenever issued, be granted only on payment in full of the duties respectively, and shall expire on the thirtieth day of September in each year.

(3.) If any person shall brew beer without having in force a proper licence under this Act, he shall incur a fine of one hundred pounds, and all worts, beer, and vessels, utensils, and materials for brewing in his possession shall be forfeited.

11. On and after the first day of October one thousand eight hundred and eighty, there shall

be charged, collected, levied, and paid for the use of Her Majesty, her heirs and successors, in respect of beer brewed in the United Kingdom, a duty calculated according to the specific gravity of the worts thereof; that is to say,

Upon every thirty-six gallons of worts of a specific gravity of one thousand and fifty-seven degrees the duty of six shillings and threepence; and so in proportion for any difference in quantity or gravity.

12. Forty-two pounds weight of malt or corn of any description, or twenty-eight pounds weight of sugar, shall be deemed the equivalent of a bushel of malt; and the expression "bushel of malt" shall include either of its equivalents, or any quantities of malt, corn, and sugar, or any two of those materials, as by relation to such equivalents, shall be equal to a bushel of malt.

13. (1.) Every brewer shall be deemed to have brewed thirty-six gallons of worts of the gravity of one thousand and fifty-seven degrees for every two bushels of malt entered or used by him in brewing.

(2.) The duty on beer brewed by a brewer other than a brewer for sale shall be charged on the quantity of worts by relation to materials as aforesaid.

(3.) The duty on beer brewed by a brewer for sale shall be charged in respect of every thirty-six gallons of worts produced of the gravity or original gravity of one thousand and fifty-seven degrees, and so in proportion for any difference in quantity or gravity as entered in the book by the brewer, or as ascertained by the officer, whichever is higher.

(a.) If the amount of worts deemed to have been brewed by relation to materials exceeds in quantity and gravity by more than four per centum the worts produced from such materials, the duty shall be charged in respect of the excess over and above the four per centum.

(b.) In respect of such accidental loss and waste as arises in the brewing of beer, a deduction of six per centum shall be made from the quantity of worts produced.

(4.) Where the materials used in brewing by a brewer for sale are proved to the satisfaction of the Commissioners to be of such a description or nature that some deduction from the quantity chargeable by relation to materials should be made, they shall make such a deduction from that quantity as shall, in their opinion, afford just relief to the brewer.

14. (1.) An approved saccharometer and tables shall be used to ascertain the quantity by relation to gravity of all worts; and, in calculating the

gravity, a degree of gravity shall be taken as equal to one thousandth part of the gravity of distilled water at sixty degrees Fahrenheit.

(2.) The quantity and gravity so ascertained shall be deemed to be the true quantity and gravity of such worts.

15. When fermentation has commenced in any worts so that the original gravity cannot be ascertained by the saccharometer, such gravity may be determined in the following manner:

(1.) A sample is to be taken from any part of such worts and a definite quantity thereof by measure at the temperature of sixty degrees Fahrenheit shall be distilled:

(2.) The distillate and residue shall each be made up with distilled water to the original measure of the quantity before distillation, and the gravity of each shall be ascertained:

(3.) The number of degrees by which the gravity of the distillate is less than the gravity of distilled water shall be deemed the spirit indication of the distillate:

(4.) The degrees of original gravity standing opposite to such spirit indication in the Table in the first schedule to this Act added to the specific gravity of the residue shall be deemed to be the original gravity of the worts.

16. The duty on beer shall become due immediately on the same being charged by the officer, but, in the case of a brewer for sale, the Commissioners may cause the charge to be made up at the close of each month in respect of all the brewings during that month, and, in that case, the aggregate of the amounts of worts deemed to be brewed by relation to materials, and the aggregate of the amounts of worts produced shall be treated as worts deemed to be brewed or produced in one brewing, and the Commissioners may, if they think fit, defer the payment of the duty upon such terms as may be prescribed: Provided, that the time for payment shall not be later than the fifteenth day of the month succeeding the month in which the duty was charged.

17. (1.) If any duty payable by a brewer remains unpaid after the time within which it is payable, the collector may, by warrant signed by him, empower any person to distrain all beer, malt, or other materials for brewing, vessels, and utensils belonging to the brewer, or in any premises in the use or possession of the brewer or of any person on his behalf or in trust for him, and to sell the same by public auction, giving six days' previous notice of the sale.

(2.) The proceeds of sale shall be applied in or towards payment of the costs and expenses of the distress and sale, and in or towards payment of the duties due from the brewer, and the surplus, if any, shall be paid to the brewer.

(3.) In the event of any beer, malt, or other materials being so distrained, the brewer may, at any time before the day appointed for the sale, remove the whole or any part thereof on paying to the collector in or towards payment of the duty, the true value of the beer, malt, or other materials.

18. When any materials upon which a charge of duty has been made, or any worts or beer, shall be destroyed by accidental fire or other unavoidable cause, while the same are on the entered premises of a brewer, the Commissioners shall, on proof of such loss to their satisfaction, remit or repay the duty charged or paid:

*As to Brewers for Sale.*

19. Any person who brews beer for the use of any other person at any place other than the premises of the person for whose use the beer shall be brewed, and any person licensed to deal in, or retail, beer, who brews beer, shall be deemed to be a brewer for sale.

20. A book in the prescribed form shall be delivered by an officer to every brewer for sale, and the following provisions shall have effect in relation to the book, and to the entries to be made therein:—

- (1.) The brewer shall keep the book in some part of his entered premises at all times ready for the inspection of the officers, and shall permit any officer at any time to inspect the same and make extracts therefrom.
- (2.) The brewer shall enter separately in the book the quantity of malt, corn, and sugar which he intends to use in his next brewing, and also the day and hour when such next brewing is intended to take place.
- (3.) The brewer shall make such entry, so far as respects the day and hour of brewing, twenty-four hours at the least before he shall begin to mash any malt or corn, or dissolve any sugar, and so far as respects the quantity of malt, corn, and sugar, two hours at the least before the hour entered for brewing.
- (4.) The brewer shall, two hours at the least before the hour entered for brewing, enter the time when all the worts will be drawn off the grains in the mash tun.
- (5.) The brewer shall, within one hour of the worts being collected, or, if the worts

be not collected before nine in the afternoon, before nine in the forenoon of the following day, enter the particulars of the quantity and gravity of the worts produced from each brewing, and also the description and number of the vessel or vessels into which the worts have been conveyed.

- (6.) The brewer shall, at the time of making any entry, insert the date when the entry is made.
- (7.) The brewer shall not cancel, obliterate, or alter any entry in the book, or make therein any entry which is untrue in any particular.
- (8.) The brewer shall, if so required by the Commissioners, send notice in writing containing the prescribed particulars to the proper officer forty-eight hours before his next brewing is intended to take place.

For any contravention of this section the brewer shall incur a fine of one hundred pounds.

21. (1.) Every brewer for sale must cause to be legibly painted with oil colour, and keep so painted, on some conspicuous part of every mash tun, underback, wort receiver, copper, heating-tank, cooler, and collecting and fermenting vessel, intended to be used by him in his business and of the outside of the door of every room and place wherein any part of his business is to be carried on, the name of the vessel, room, or place, according to the purpose for which it is intended:

(2.) When more than one vessel, room, or place is used for the same purpose, all such vessels, rooms, or places must be marked by progressive numbers.

(3.) All mash tuns, underbacks, wort receivers, coppers, heating tanks, coolers, and collecting and fermenting vessels, shall be so placed and fixed as to admit of the contents being accurately ascertained by gauge or measure, and shall not be altered in shape, position, or capacity without two days previous notice in writing to the proper officer.

(4.) For any contravention of this section the brewer shall incur a fine of one hundred pounds.

22. (1.) Every brewer for sale must, before he begins to brew, make entry in the prescribed form of all premises, rooms, places, and vessels intended to be used by him for his business, specifying the purpose for which each room, place, and vessel is to be used, and the mark by which it is distinguished.

(2.) The brewer must sign the entry, and deliver it to the proper officer.

23. (1.) All grains in a mash tun must be kept untouched for the space of one hour after the time entered in the book as the time for the worts to be drawn off, unless the officer has attended and taken an account of such grains.

(2.) All worts shall be removed successively, and in the customary order of brewing, to the underback, coppers, coolers, and collecting and fermenting vessels, and shall not be removed from the last-mentioned vessels until an account has been taken by the officer, or until after the expiration of twelve hours from the time at which the worts are collected in such vessels.

(3.) When worts shall have commenced running into a collecting or fermenting vessel, the whole of the produce of the brewing shall be collected within twelve hours.

(4.) For any contravention of this section the brewer shall incur a fine of fifty pounds.

24. If the original gravity of any worts contained in the collecting or fermenting vessels shall at any time be found to exceed by five degrees the gravity as entered in the book by the brewer, or as ascertained by the officer, such worts shall be deemed to be the produce of a fresh brewing and be charged with duty accordingly.

25. (1.) Every brewer for sale shall keep the total produce of a brewing separate from the produce of any other brewing for the space of twenty-four hours, unless an account of the first-mentioned produce shall have been sooner taken by the officer.

(2.) He shall not mix the produce of one brewing with that of any other brewing, except in his store vats or casks, unless he shall have given previous notice in writing to the proper officer, and he shall specify in writing the quantity and gravity of the worts when mixed: Provided, that a brewer having weak worts of a gravity not exceeding twenty-five degrees, may, if he think fit, reserve them for mixing with the produce of his next brewing, but in such case he shall keep all such weak worts in the coppers, heating-tanks, or other vessels entered for the purpose.

(3.) For any contravention of this section the brewer shall incur a fine of one hundred pounds.

26. (1.) An officer may take such samples as he may deem necessary of any worts or beer or materials for brewing in the possession of any brewer for sale.

(2.) The brewer may, if he wishes, before any such sample is taken, stir up and mix together all such worts, beer, or materials from which the sample is taken.

27. If any brewer for sale shall conceal any

worts or beer so as to prevent any officer from taking an account thereof, or shall mix any sugar with any worts or beer so as to increase the quantity or gravity thereof after an account of such worts or beer has been taken by an officer and the duty has been charged thereon, he shall, for every such offence, incur a fine of one hundred pounds, and the worts or beer in respect of which the offence is committed, together with the vessels containing the same, shall be forfeited.

28. (1.) Every brewer for sale must provide and maintain sufficient and just scales and weights and other necessary and reasonable appliances to enable the officers to take account of, or check by weight, gauge, or measure all materials and liquids used or produced in brewing.

(2.) He must also render all necessary assistance to the officers in the taking of such accounts.

(3.) He must also, if required by the officer, provide sufficient lights, ladders, and other conveniences.

(4.) For every contravention of this section the brewer shall incur a fine of one hundred pounds.

29. (1.) An officer may at any time, either by day or night, enter any part of the entered premises of a brewer for sale, to take an account of the materials used or to be used in brewing, and of the worts and beer produced.

(2.) If an officer, after having demanded admission into the entered premises of a brewer for sale, and declared his name and business at any entrance or window thereof, is not immediately admitted, the officer, and any person acting in his aid, may at any time, either by day or night (but at night only in the presence of an officer of the peace), break open any door or window of the premises, or break through any wall thereof for the purposes of obtaining admission, and the brewer shall incur a fine of one hundred pounds.

30. (1.) If any officer has reason to suspect that any private or concealed pipe, or conveyance, or vessel, is kept or made use of by a brewer for sale, he may, either by day or night, but at night only in the presence of an officer of the peace, break open any part of the premises of such brewer and forcibly enter therein, and may break up the ground in or adjoining such premises, or any wall thereof, to search for such private or concealed pipe, or conveyance, or vessel.

(2.) If such officer shall find any such pipe or conveyance, he may enter any house in the possession of any other person into which such pipe or conveyance may lead, and may break up any part of such house or premises to search for the vessel communicating with such pipe.

(3.) Every such pipe, conveyance, or vessel, and all beer, worts, or materials for brewing

found therein, shall be absolutely forfeited, and the brewer shall incur a fine of one hundred pounds.

(4.) If any damage is done in the search, and such search is unsuccessful, the damage shall be made good.

31. If any person by himself, or by any person in his employ, obstructs, hinders, or molests an officer in the execution of his duty, or any person acting in the aid of such officer, he shall incur a fine of one hundred pounds.

*As to Brewers other than Brewers for Sale.*

32. A paper in the prescribed form shall be delivered by an officer to every brewer, other than a brewer for sale, if chargeable to the duty on beer under this Act, and the following provisions shall have effect in relation to the paper and the entries to be made therein:—

- (1.) The brewer shall, before commencing to brew, enter in the paper the quantity of malt, corn, and sugar which he intends to use in the brewing;
- (2.) The brewer shall, on demand by an officer, produce the paper for his inspection, and shall not cancel, obliterate, or alter any entry in the paper, or make any entry which is untrue in any particular;

For any contravention of this section the brewer shall incur a fine of ten pounds.

33. (1.) The Commissioners may, when they think fit, require a brewer other than a brewer for sale to verify the entries in the paper delivered to him by a declaration to be made by him before a justice of the peace or an authorized officer.

(2.) The charge of duty shall be made, and the duty shall be paid, at such times as the Commissioners shall appoint.

(3.) Provided that if the annual value of the house occupied by the brewer does not exceed ten pounds, the beer brewed by him shall not be charged with duty.

34. (1.) A brewer, other than a brewer for sale, shall only brew beer for his own domestic use, or for consumption by farm labourers employed by him in the actual course of their labour or employment.

(2.) The brewer shall only brew on premises occupied by him, or, in case the brewer occupies a house of an annual value not exceeding ten pounds, on premises gratuitously lent to him by a brewer other than a brewer for sale.

(3.) If the brewer contravenes either of the foregoing provisions of this section, or sells, or offers for sale, any beer brewed by him, he shall incur the penalty of ten pounds.

35. Any officer may at all reasonable times enter and inspect any premises used for the purposes of brewing by a brewer other than a brewer for sale, and examine the vessels and utensils used by him for the purposes of brewing.

*Drawback on Beer.*

36. On and after the first day of October one thousand eight hundred and eighty there shall be allowed and paid in respect of beer which shall be exported from the United Kingdom to foreign parts as merchandise, or shipped for use as ship's stores, a drawback calculated according to the original gravity thereof; (that is to say,)

Upon every thirty-six gallons of an original gravity of one thousand and fifty-seven degrees the drawback of six shillings and threepence, and so in proportion for any difference in quantity or gravity.

37. (1.) It shall be lawful for any person to export as merchandise to foreign parts, or for use as ship's stores, any beer brewed by a brewer for sale in the United Kingdom.

(2.) The beer shall be in such casks or packages as may be prescribed, and the person intending to export the same shall produce to the proper officer at the place from which the beer is to be exported a declaration by the brewer made before an authorized officer stating the date upon which the beer was brewed and the original gravity thereof, and that the full duties of excise have been charged thereon.

(3.) He shall also give to the said officer a notice in the prescribed form specifying the mark and number on each cask or package to be exported, the original gravity and quantity of the beer therein, and the amount of the drawback claimed.

38. (1.) An officer or an officer of customs may take a sample of beer from any cask or package produced for shipment on drawback for the purpose of ascertaining in the manner authorized by this Act the original gravity thereof.

(2.) If the gravity so ascertained, or the quantity tested by gauge or measure, shall be less than the gravity or quantity stated in the declaration, and notice delivered to the proper officer, or, if such declaration or notice shall contain any untrue statement, no drawback shall be payable in respect of the beer therein referred to, and the brewer, and also the person intending to export the beer, shall incur a fine of fifty pounds.

39. (1.) The officer of customs at the port from which the beer is shipped shall endorse on the notice a certificate of the quantity of beer actually

exported, and at the expiration of one month from the date of such certificate the proper officer shall deliver to the exporter or his agent a debenture in the prescribed form specifying the amount of the drawback payable in respect of the beer.

(2.) The debenture must be presented to the collector with a declaration endorsed thereon containing the prescribed particulars, signed by the exporter, and the collector shall thereupon pay to the exporter the amount specified in the debenture.

(3.) Where a certificate of landing at the port of destination is required, such certificate must be delivered to the collector previously to the payment of the drawback.

### PART III.

#### *Licences for the Sale of Liquors by Retail.*

40. For the purposes of this part of this Act each of the following terms shall have the meaning assigned to it in this section:

"Cider" includes perry:

"Sweets" includes made wines, mead, and metheglin:

"Beer" includes cider:

"Wine" includes sweets.

41. On and after the first day of July one thousand eight hundred and eighty, in lieu of the duties of excise now payable on the licences mentioned in this section (except in the case of a licence to sell wine by retail to be taken out by a grocer in Scotland), there shall be charged and paid the duties following; (that is to say,)

	Duty.
	£ s. d.
On a licence to be taken out by a person for the selling of cider by retail in England - - -	1 5 0
On a licence to be taken out by a retailer of sweets in the United Kingdom - - -	1 5 0
On a licence to be taken out by a person for the selling by retail in the United Kingdom of beer to be consumed on the premises - - -	3 10 0
On a licence to be taken out by a person for the selling by retail in England of beer not to be consumed on the premises - - -	1 5 0
On a licence (additional) to be taken out by a licensed dealer in beer in England or Ireland authorising him to sell by retail beer not to be consumed on the premises - - -	1 5 0

	Duty.
	£ s. d.
On a licence to be taken out to sell wine by retail to be consumed on the premises - - -	3 10 0
On a licence to be taken out by any person in England or Ireland for the sale by retail in any shop of wine not to be consumed on the premises - - -	2 10 0

42. (1.) On and after the first day of July one thousand eight hundred and eighty, there shall be charged and paid upon licences for the sale by retail of beer and wine to be taken out by any persons in the United Kingdom who may be authorised to obtain the same, the duties of excise following; (that is to say,)

	Duty.
	£ s. d.
On a licence for the sale by retail of beer and wine to be consumed on the premises - - -	4 0 0
On a licence for the sale by retail of beer and wine not to be consumed on the premises - - -	3 0 0

(2.) Every such licence shall be in such form as the Commissioners shall direct, and shall expire in England or Ireland on the tenth day of October, and in Scotland on the fifteenth day of May, in each year.

43. (1.) On and after the first day of July one thousand eight hundred and eighty, in lieu of the duties of excise now payable on licences to be taken out by retailers of spirits in the United Kingdom, there shall be charged and paid the duties following; (that is to say,)

	Duty.
	£ s. d.
If the annual value of the dwelling-house in which the retailer shall reside or retail spirits, together with the offices, courts, yards, and gardens therewith occupied, is under 10l. - - -	4 10 0
Is 10l. and under 15l. - - -	6 0 0
" 15l. " 20l. - - -	8 0 0
" 20l. " 25l. - - -	11 0 0
" 25l. " 30l. - - -	14 0 0
" 30l. " 40l. - - -	17 0 0
" 40l. " 50l. - - -	20 0 0
" 50l. " 100l. - - -	25 0 0
" 100l. " 200l. - - -	30 0 0
" 200l. " 300l. - - -	35 0 0
" 300l. " 400l. - - -	40 0 0
" 400l. " 500l. - - -	45 0 0
" 500l. " 600l. - - -	50 0 0
" 600l. " 700l. - - -	55 0 0
" 700l. or above - - -	60 0 0

(2.) The holder of a licence to retail spirits chargeable with duty under this Act shall not be

required to take out any further or other excise licence to enable him to sell beer or wine by retail. The holder of such licence shall not be liable for any percentage, discount, or other charge more than the amount stated in the Act.

(3.) Any person applying for a six days' and early closing licence for the sale of spirits as an auxiliary only to his business as a restaurateur or eating-house keeper, and not keeping an open drinking bar, shall be entitled to his licence at a sum not exceeding thirty pounds, no such reduction to be made unless the licensing justices shall have certified by indorsement on their certificate that the nature of the business carried on by the applicant justifies the reduced scale of charge.

(4.) Where in the case of premises of the value of fifty pounds or upwards it shall be proved to the satisfaction of the Commissioners that the premises are structurally adapted for use as an inn or hotel for the reception of guests and travellers desirous of dwelling therein, and are mainly so used, the amount of duty to be paid on a licence to retail spirits shall not exceed twenty pounds. Provided that the relief under this subsection shall not be given in case any portion of the premises is set apart and used as an ordinary public-house for the sale and consumption therein of liquors, and the annual value of such portion, in the opinion of the Commissioners, exceeds twenty-five pounds.

(5.) The amount of duty to be paid for a licence to retail spirits in any theatre granted under the provisions contained in the seventh section of the Act of the fifth and sixth years of the reign of King William the Fourth, chapter thirty-nine, shall not exceed twenty pounds.

(6.) The expression "retailers of spirits," as used in this section, does not include a spirit grocer in Ireland, as defined by section eighty-one of the Licensing Act, 1872, or a dealer in spirits selling spirits in bottle under an additional licence authorising him in that behalf, or a grocer in Scotland as defined by section two of the Public Houses (Scotland) Act, 1853.

(7.) In the case of premises in Ireland, the annual value, upon which the duty on the licence in respect of the premises is to be charged, shall not exceed the amount of the value assigned thereto in the valuation in force under the Act of the fifteenth and sixteenth years of Her Majesty's reign, chapter sixty-three, with the addition of twenty per centum of such amount; and the licensed person may appeal against the amount of annual value upon which the duty has been charged and paid to the chairman of the sessions of the peace for the county, or the recorder of the city or borough, in which the premises are situate, and such chairman or recorder shall have full power to hear and determine such appeal, and his determination shall be final. If, in ac-

cordance with such determination, there shall have been any over-payment of duty, the amount shall be repaid.

44. The provisions regarding six-day licences and early closing licences contained in section forty-nine of the Licensing Act, 1872, and sections seven and eight of the Licensing Act, 1874, shall be deemed to apply throughout the United Kingdom.

45. (1.) The duty now charged upon a licence to supply, retail, and sell foreign wine, strong beer, cider, perry, spirituous liquors, and tobacco to passengers on board any packet boat or other vessel employed for the carriage and conveyance of passengers, to be consumed in or on board such boat or vessel, shall cease to be payable, and there shall be granted and paid the following duties of excise; (that is to say),

Upon a licence to be taken out for the sale of spirits, wine, beer, and tobacco to be consumed on board a boat or vessel of any description employed for the carriage and conveyance of persons going as passengers from any place in the United Kingdom to any other place in the United Kingdom, or going from and returning to the same place on the same day,—

	Duty		
	£	s.	d.
If the licence is to be in force from the day of the date thereof until the thirty-first day of March next ensuing		5	0 0
If the licence is to be in force for one day only		1	0 0

(2.) Such licences shall be granted under and be subject to the enactments contained in the Act of the ninth year of the reign of King George the Fourth, chapter forty-seven, as amended by section ten of the Act of the fourth and fifth years of the reign of King William the Fourth, chapter seventy-five, so far as such enactments are consistent with this Act and the terms of the licences respectively.

#### *Supplementary.*

46. The duties and drawbacks of excise, charged and allowed by Parts II. and III. of this Act, and the licences therein mentioned, shall be under the management of the Commissioners; and all the powers, provisions, regulations, and directions contained in any Act relating to excise duties, drawbacks, or licences, or to penalties or forfeitures under excise Acts, and now or hereafter in force, shall respectively be of full force and effect with respect to the duties and drawbacks charged and allowed by Parts I. and II. of this Act and the licences therein mentioned, and

the penalties and forfeitures imposed by this Act, so far as the same are applicable and are consistent with the provisions of this Act, as fully and effectually as if the same had been herein specially enacted with reference to the last-mentioned duties, drawbacks, licences, penalties, and forfeitures respectively.

47. The grant of a duty on beer by this Act shall not be deemed to bring beer within the expression "exciseable liquors" as contained in the Third Schedule to the Act of the eighth and ninth years of Her Majesty's reign, chapter one hundred and nine.

48. Nothing in this Act contained shall in anywise alter or affect the rights and privileges now existing under the charters of—

- (1.) Any university in the United Kingdom, or
- (2.) The master, wardens, freemen, and commonalty of the Vintners of the city of London, or
- (3.) The mayor or burgesses of the borough of Saint Albans in the county of Hertford.

49. On the first day of October one thousand eight hundred and eighty the enactments described in the second schedule to this Act shall be and are hereby repealed, to the extent in the said schedule mentioned: Provided that this repeal shall not affect the past operation of any enactment hereby repealed, or the liability for, or recovery of, any duties charged before the said first day of October, or interfere with the institution or prosecution of any proceeding in respect of any offence committed, or any penalty or forfeiture incurred against or under any enactment hereby repealed.

#### PART IV.

##### *Income Tax.*

50. In addition to the duties of income tax granted by the Customs and Inland Revenue Act, 1880, there shall be charged, collected, and paid for the year which commenced on the sixth day of April one thousand eight hundred and eighty, in respect of all property, profits, and gains mentioned or described as chargeable in the Act of the sixteenth and seventeenth years of Her Majesty's reign, chapter thirty-four, the following duties of income tax; (that is to say,)

For every twenty shillings of the annual value or amount of property, profits, and gains chargeable under Schedules (A.), (C.), (D.), or (E.) of the last-mentioned Act, the duty of one penny;

And for every twenty shillings of the annual value of the occupation of lands, tenements,

hereditaments, and heritages chargeable under Schedule (B.) of the last-mentioned Act, the duty of one halfpenny;

and such duties shall, in any assessments made or to be made for the said year, be added to, and charged, collected, and paid with the duties granted by the Customs and Inland Revenue Act, 1880, and shall in all respects be levied under and be subject to the same provisions as the duties so granted.

51. (1.) Provided that, in the case of dividends, interest, or other annual profits or gains, due or payable half-yearly or quarterly in the course of the said year which commenced on the sixth day of April one thousand eight hundred and eighty, where a half-yearly payment or quarterly payment shall have become due or payable prior to the passing of this Act, and duty at the rate of fivepence only shall have been paid thereon, such half-yearly payment or the two first quarterly payments shall be deemed to have been, or be, chargeable only with the duty of fivepence granted by the Customs and Inland Revenue Act, 1880, and the other half-yearly payment or the two other quarterly payments shall be chargeable and assessed and charged with the duty of sevenpence.

(2.) Provided also, that for determining the amount which may be deducted by any person liable to pay any rent, interest, annuity, or other annual payment in the course of the said year, on making the payment, where any such payment shall have been made prior to the passing of this Act, and duty at the rate of fivepence only shall have been deducted therefrom, the duty shall be deemed to be payable at the rate of fivepence for the first half of the said year, and at the rate of sevenpence for the other half of the said year.

(3.) Provided also, that the charge or deduction of duty at the rate of sixpence in the case of any payment made in the course of the said year prior to the passing of this Act shall be deemed to have been a legal charge or deduction.

52. The relief given by section three of the Act of the fourteenth and fifteenth years of Her Majesty's reign, chapter twelve, and referred to in section forty-six of the said Act of the sixteenth and seventeenth years of Her Majesty's reign, chapter thirty-four, shall be extended and granted to every person occupying lands for the purposes of husbandry only, being the owner thereof, although he may not obtain his livelihood principally from husbandry.

## PART V.

*Stamps.*

53. (1.) Where any debenture stock, corporation stock, municipal stock, or funded debt, by whatever name known, has been or shall be created and issued by the council of any city or municipal borough under the provisions of the Local Loans Act, 1875, or of any other Act, the Council may, with the sanction of the Commissioners of Her Majesty's Treasury, agree with the Commissioners for the payment to them, by way of composition for the stamp duty on transfers of such stock, of a sum calculated (1) at the rate of one shilling and threepence for every full sum of ten pounds, and the like for every fraction of ten pounds of the nominal amount of such stock inscribed in the name of each and every stockholder at the date of the composition; with the addition (2), when the period within which the stock is to be redeemed or paid off, or during which annual or other payments in respect of the redemption or payment off of the same are required to be made, exceeds sixty years, but does not exceed one hundred years from that date, of threepence for every such ten pounds or fraction of ten pounds; and (3), if the said period exceeds one hundred years, or no period is fixed for such redemption or payment off, or no such annual or other payments are required to be made, with the addition of the said sum of threepence, and a further sum of threepence for every such ten pounds or fraction of ten pounds; and in consideration of such payment transfers of the stock in respect of which such composition has been paid shall be exempt from stamp duty.

(2.) The provisions for composition contained in this section shall be substituted for any other enactments for a composition for the same duty, but shall not be applicable where any composition has been actually paid previously to the passing of this Act in respect of any stock then created and issued.

(3.) Where any such stock as in this section mentioned is issued in lieu of mortgages or debentures on the issue of which stamp duty has been paid, it shall be lawful for the Commissioners of Her Majesty's Treasury to reduce the amount of composition payable under this section by the amount of the stamp duty so paid or any part thereof.

54. The sum to be paid by way of composition for stamp duty in the following cases, that is to say,

- (1.) Under sections three and four of the Metropolitan Board of Works (Loans) Act, 1870, on transfers of metropolitan consolidated stock and metropolitan annuities from time to time issued or granted after the passing of this Act; or
- (2.) Under section four of the Canadian Stock Stamp Act, 1874, on transfers of stock of the Government of Canada from time to time inscribed after the passing of this Act in books kept in the United Kingdom; or
- (3.) Under section three of the Colonial Stock Act, 1877, on transfers of colonial stock to which from time to time that Act is made to apply after the passing of this Act,

shall be calculated as if the rates enacted by this Act for the composition of the duty on transfers of stock created and issued by the council of any municipal borough were substituted for the rate or sum of seven shillings and sixpence in the said section respectively: Provided that where the holders of the debentures of the Government of a colony have, before the first day of July one thousand eight hundred and eighty, had an option given to them to exchange such debentures within twelve months for colonial stock, to which the Colonial Stock Act, 1877, applies, the composition for the stamp duty on transfers of colonial stock issued in accordance with any option declared within the said twelve months shall be the same as if this section had not been enacted.

55. All sums certified by the Commissioners to have been received by way of composition for stamp duty on transfers of stock or annuities under this Act or any Act amended by this Act shall be paid over to the Commissioners for the Reduction of the National Debt, and shall be applied by them towards the reduction of the National Debt in such manner as the Commissioners of Her Majesty's Treasury from time to time direct.

56. The stamp duty of one penny on a letter of renunciation may be denoted by an adhesive stamp, which is to be cancelled by the person by whom the letter of renunciation is executed.

57. It shall not after the passing of this Act be obligatory on the Commissioners to publish in any newspaper any return made to them by any banking company which is duly registered under the provisions of the several Acts specified in the Third Schedule to this Act, or any of them.

## SCHEDULES.

## FIRST SCHEDULE.

Containing a Table to be used in determining the original Specific Gravity of Worts of Beer.

Degrees of Spirit Indication.	Degrees of original Specific Gravity.	Degrees of Spirit Indication.	Degrees of original Specific Gravity.	Degrees of Spirit Indication.	Degrees of original Specific Gravity.	Degrees of Spirit Indication.	Degrees of original Specific Gravity.
·1	·3	4·1	15·5	8·1	34·3	12·1	54·9
·2	·6	4·2	16·0	8·2	34·8	12·2	55·4
·3	·9	4·3	16·4	8·3	35·4	12·3	55·9
·4	1·2	4·4	16·8	8·4	35·9	12·4	56·4
·5	1·5	4·5	17·3	8·5	36·5	12·5	56·9
·6	1·8	4·6	17·7	8·6	37·0	12·6	57·4
·7	2·1	4·7	18·2	8·7	37·5	12·7	57·9
·8	2·4	4·8	18·6	8·8	38·0	12·8	58·4
·9	2·7	4·9	19·1	8·9	38·6	12·9	58·9
1·0	3·0	5·0	19·5	9·0	39·1	13·0	59·4
1·1	3·3	5·1	19·9	9·1	39·7	13·1	60·0
1·2	3·7	5·2	20·4	9·2	40·2	13·2	60·5
1·3	4·1	5·3	20·9	9·3	40·7	13·3	61·1
1·4	4·4	5·4	21·3	9·4	41·2	13·4	61·6
1·5	4·8	5·5	21·8	9·5	41·7	13·5	62·2
1·6	5·1	5·6	22·2	9·6	42·2	13·6	62·7
1·7	5·5	5·7	22·7	9·7	42·7	13·7	63·3
1·8	5·9	5·8	23·1	9·8	43·2	13·8	63·8
1·9	6·2	5·9	23·6	9·9	43·7	13·9	64·3
2·0	6·6	6·0	24·1	10·0	44·2	14·0	64·8
2·1	7·0	6·1	24·6	10·1	44·7	14·1	65·4
2·2	7·4	6·2	25·0	10·2	45·1	14·2	65·9
2·3	7·8	6·3	25·5	10·3	45·6	14·3	66·5
2·4	8·2	6·4	26·0	10·4	46·0	14·4	67·1
2·5	8·6	6·5	26·4	10·5	46·5	14·5	67·6
2·6	9·0	6·6	26·9	10·6	47·0	14·6	68·2
2·7	9·4	6·7	27·4	10·7	47·5	14·7	68·7
2·8	9·8	6·8	27·8	10·8	48·0	14·8	69·3
2·9	10·2	6·9	28·3	10·9	48·5	14·9	69·9
3·0	10·7	7·0	28·8	11·0	49·0	15·0	70·5
3·1	11·1	7·1	29·2	11·1	49·6	15·1	71·1
3·2	11·5	7·2	29·7	11·2	50·1	15·2	71·7
3·3	12·0	7·3	30·2	11·3	50·6	15·3	72·3
3·4	12·4	7·4	30·7	11·4	51·2	15·4	72·9
3·5	12·9	7·5	31·2	11·5	51·7	15·5	73·5
3·6	13·3	7·6	31·7	11·6	52·2	15·6	74·1
3·7	13·8	7·7	32·2	11·7	52·7	15·7	74·7
3·8	14·2	7·8	32·7	11·8	53·3	15·8	75·3
3·9	14·7	7·9	33·2	11·9	53·8	15·9	75·9
4·0	15·1	8·0	33·7	12·0	54·3	16·0	76·5

## SECOND SCHEDULE.

## ENACTMENTS REPEALED.

Session and Chapter.	Title or Abbreviated Title of Act.	Extent of Repeal.
1 Geo. 1. stat. 2. c. 2.	An Act for charging and continuing the duties on malt, &c.	The whole Act.
33 Geo. 2. c. 7. -	An Act for granting to His Majesty several duties upon malt, and for raising the sum of eight millions by way of annuities and a lottery to be charged on the said duties, &c.	The whole Act.
56 Geo. 3. c. 58. -	An Act to repeal an Act made in the fifty-first year of His present Majesty for allowing the manufacture and use of a liquor prepared from sugar for colouring porter.	Sections two and three so far as they relate to brewers.
1 & 2 Geo. 4. c. 22. -	An Act for altering and amending the laws of excise for securing the payment of the duties on beer and ale brewed in Great Britain.	The whole Act.
3 Geo. 4. c. 30. -	An Act for reducing, during the continuance of the present duty on malt, the duty on malt made from bear or bigg only in Scotland.	The whole Act.
6 Geo. 4. c. 58. -	An Act for providing equivalent rates of excise duties, allowances, and drawbacks on beer and malt, &c.	The whole Act.
6 Geo. 4. c. 81. -	An Act to repeal several duties payable on excise licences in Great Britain and Ireland, and to impose other duties in lieu thereof; and to amend the laws for granting excise licences.	Sections two and twenty-six, so far as they relate to brewers and maltsters or makers of malt.
7 & 8 Geo. 4. c. 52. -	An Act to consolidate and amend certain laws relating to the revenue of excise on malt, &c.	The whole Act.
11 Geo. 4. and 1 Will. 4. c. 17.	An Act to alter and amend an Act of the seventh and eighth years of His present Majesty for consolidating and amending the laws of excise on malt, &c.	The whole Act.
11 Geo. 4. and 1 Will. 4. c. 31.	An Act for reducing the duty on malt made from bear or bigg only, in Ireland, to the same duty as is now payable thereon in Scotland.	The whole Act.
11 Geo. 4. and 1 Will. 4. c. 51.	An Act to repeal certain of the duties on cyder in the United Kingdom, and on beer and ale in Great Britain, and to make other provisions in relation thereto.	The whole Act, except sections twenty-two, twenty-three, and twenty-four.
1 & 2 Will. 4. c. 55. -	An Act to consolidate and amend the laws for suppressing the illicit making of malt and distillation of spirits in Ireland.	Sections one to eight inclusive, and sections seventeen to twenty-one inclusive, twenty-six, twenty-seven, twenty-eight, thirty, thirty-eight, forty-eight, and fifty-one, so far as they relate to malt or corn or grain making into malt.

Session and Chapter.	Title or Abbreviated Title of Act.	Extent of Repeal.
7 Will. 4. and 1 Vict. c. 49.	An Act to amend certain laws of excise relating to the duties on malt made in the United Kingdom.	The whole Act.
5 & 6 Vict. c. 30. -	An Act to provide regulations for preparing and using roasted malt in colouring beer.	The whole Act.
10 & 11 Vict. c. 5. -	An Act to allow the use of sugar in the brewing of beer.	The whole Act.
17 & 18 Vict. c. 27. -	An Act for granting certain additional rates and duties of excise.	The whole Act.
17 & 18 Vict. c. 30. -	An Act for granting certain duties of excise on sugar made in the United Kingdom.	The whole Act.
18 & 19 Vict. c. 94. -	An Act to impose increased rates of duty of excise on spirits distilled in the United Kingdom, to allow malt, sugar, and molasses to be used duty free in the distilling of spirits, &c.	The whole Act.
19 & 20 Vict. c. 34. -	An Act to grant allowances of excise duty on malt in stock, to alter and regulate certain drawbacks and allowances in respect of malt duty, &c.	The whole Act.
22 & 23 Vict. c. 18. -	An Act for granting to Her Majesty additional rates of income tax, and to reduce the period of credit allowed for payment of the excise duty on malt.	Section seven.
23 & 24 Vict. c. 113.	An Act to grant duties of excise on chicory and on licences to dealers in sweets or made wines; also to reduce the excise duty on hops and the period of credit allowed for payment of the duty on malt, &c.	Section two, sections twenty-two to thirty-two inclusive, and section thirty-three so far as it relates to malt.
23 & 24 Vict. c. 114. -	An Act to reduce into one Act and to amend the excise regulations relating to the distilling, rectifying, and dealing in spirits.	Sections fifty-two, sixty-one, and sixty-two, and section sixty-three so far as it relates to malt.
24 & 25 Vict. c. 91. -	An Act to amend the laws relating to the Inland Revenue.	Section seven.
25 & 26 Vict. c. 22. -	An Act to continue certain duties of Customs and Inland Revenue for the service of Her Majesty, and to grant, alter, and repeal certain other duties.	Sections three to eleven inclusive, and Schedule B.
26 & 27 Vict. c. 3. -	An Act to extend the credit for payment of a portion of the excise duty on malt.	The whole Act
27 & 28 Vict. c. 9. -	An Act to allow the making of malt duty free to be used in feeding animals.	The whole Act.
27 & 28 Vict. c. 56. -	An Act for granting to Her Majesty certain stamp duties, and to amend the laws relating to the Inland Revenue.	Sections eight, ten, and eleven.
28 & 29 Vict. c. 66. -	An Act to allow the charging of the excise duty on malt according to the weight of the grain used.	The whole Act.
29 & 30 Vict. c. 64. -	An Act to amend the laws relating to the Inland Revenue.	Sections one to six inclusive.
30 & 31 Vict. c. 90. -	An Act to alter certain duties, and to amend the laws relating to the Inland Revenue.	Sections fifteen and sixteen.
33 & 34 Vict. c. 32. -	An Act to grant certain duties of Customs and Inland Revenue, and to repeal and alter other duties of Customs and Inland Revenue.	Sections six, eight, and nine.

Session and Chapter.	Title or Abbreviated Title of Act.	Extent of Repeal.
37 & 38 Vict. c. 16. -	An Act to grant certain duties of Customs and Inland Revenue, to repeal and alter other duties, and to amend the laws relating to Customs and Inland Revenue.	Sections thirteen to eighteen inclusive.
38 & 39 Vict. c. 23. -	An Act to grant certain duties of Customs and Inland Revenue, to alter other duties, and to amend the laws relating to Customs and Inland Revenue.	Section seven.

## THIRD SCHEDULE.

6th Geo. 4. cap. 42.  
7th Geo. 4. cap. 46.

7th Geo. 4. cap. 67.  
The Companies Acts, 1862 to 1880.

## CHAP. 21.

*Exchequer Bills and Bonds Act, 1880 (Session 2).*

## ABSTRACT OF THE ENACTMENTS.

1. *Treasury may raise 1,500,000*l.* by Exchequer Bonds, Exchequer Bills, or Treasury Bills.*
2. *Payment of interest and repayment of principal.*
3. *Money raised to be paid into Exchequer.*
4. *Extension of sect. 15 of 29 & 30 Vict. c. 25. as to forgery, &c. to bonds.*
5. *Short title.*

An Act to raise the sum of One million five hundred thousand pounds by Exchequer Bonds, Exchequer Bills, or Treasury Bills, for the service of the year ending on the thirty-first day of March one thousand eight hundred and eighty-one.

(12th August 1880.)

Most Gracious Sovereign,

WE, Your Majesty's most dutiful and loyal subjects, the Commons of the United Kingdom of Great Britain and Ireland, in Parliament assembled, towards raising the supply which we have cheerfully granted to Your Majesty in this session of Parliament, have resolved to grant unto Your Majesty the sum herein-after mentioned; and do therefore most humbly beseech Your Majesty that it may be enacted; and be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. Towards raising the supply granted to Her Majesty for the service of the year ending on the thirty-first day of March one thousand eight hundred and eighty-one, it shall be lawful for the Commissioners of Her Majesty's Treasury, at any time or times not later than the said thirty-first day of March, to raise any sum or sums, not exceeding in the whole one million five hundred thousand pounds, by the issue of Exchequer Bonds, Exchequer Bills, or Treasury Bills, in manner provided by the Exchequer Bills and Bonds Act, 1866, and the Treasury Bills Act, 1877, so, however, that no Exchequer Bond shall be made out for any sum less than one hundred pounds.

Every Exchequer Bond issued in pursuance of this Act shall provide for the paying off of such bond at par at any period not exceeding twelve months from the date of such bond.

2. The interest on all Exchequer Bonds issued in pursuance of this Act shall be charged upon and issued out of the Consolidated Fund of the United Kingdom, or out of the growing produce thereof.

The principal money secured by every Exchequer Bond issued in pursuance of this Act shall be repaid out of moneys provided by Parliament for the purpose.

3. All money raised in pursuance of this Act shall be paid into the Exchequer.

4. Section fifteen of the Exchequer Bills and

Bonds Act, 1866, (which section relates to the forgery of Exchequer Bills,) shall apply to all Exchequer Bonds issued in pursuance of this Act in like manner as if it were herein enacted with the substitution of Exchequer Bond for Exchequer Bill.

5. This Act may be cited as the Exchequer Bills and Bonds Act, 1880 (Session 2).

## CHAP. 22.

### *Merchant Shipping (Fees and Expenses) Act, 1880.*

#### ABSTRACT OF THE ENACTMENTS.

1. *Short title and construction of Act.*
2. *Application of proceeds of unclaimed wreck towards payment of expenses connected with wreck*
3. *Explanation of 14 & 15 Vict. c. 102. s. 43.*
4. *Provision as to fees on examination of engineers.*
5. *Provision as to expenses incurred in removing wrecks.*
6. *Costs of advertising notices of foreign sea marks.*
7. *Application of Act to past payments.*

An Act to amend the Merchant Shipping Act, 1854, so far as regards certain Fees and Expenses and Sums receivable and payable by the Board of Trade. (12th August 1880.)

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. This Act may be cited as the Merchant Shipping (Fees and Expenses) Act, 1880.

This Act shall be construed as one with the Merchant Shipping Act, 1854, and the Acts amending the same, and together with those Acts may be cited as the Merchant Shipping Acts, 1854 to 1880.

2. Whereas under section four hundred and seventy-five of the Merchant Shipping Act, 1854, a receiver of wreck appointed under that Act is required to pay into the Exchequer the net proceeds of the sale of unclaimed wreck :

And whereas in pursuance of section four hundred and fifty-seven of the Merchant Shipping Act, 1854, the fees received by such receiver of wreck are carried to the Mercantile Marine Fund, and applied in defraying any expenses

duly incurred in carrying into effect the purposes of the eighth part of that Act, in such manner as the Board of Trade direct :

And whereas the fees have been insufficient to defray such expenses, and the deficiency has been paid out of the said proceeds of unclaimed wreck, and the balance alone of such proceeds has been paid into the Exchequer, and it is expedient to sanction the payment of the said deficiency; be it therefore enacted as follows :

Any deficiency so paid as aforesaid, before the thirty-first day of March one thousand eight hundred and eighty, out of the proceeds of unclaimed wreck, shall be deemed to have been properly paid.

3. Whereas by section forty-three of the Seamen's Fund Winding-up Act, 1851, it is provided that a seaman who ceases altogether for a continuous period of three years to pay his contribution to the fund shall forfeit all claim to any relief for himself, his widow, and children; and it is expedient to amend the said enactment; be it therefore enacted as follows :

The Board of Trade may remit the said forfeiture in the case of any seaman if he satisfies them that during the said continuous period of three years he had not served at sea for any time or for such time as to render it just for him to pay his contribution, and that such non-service

at sea did not arise from his having left the sea service when still of age and strength to continue in it and with the intention of not returning to the same.

Section forty-three of the Seaman's Fund Winding-up Act, 1851, as amended by this section, shall apply to masters as if they were mentioned therein in addition to seamen.

4. Whereas by section seven of the Merchant Shipping Act Amendment Act, 1862, it is provided that the fees payable by applicants for examination for certificates of competency as engineers shall be carried to the account of the Mercantile Marine Fund, and at the time of the passing of that Act the salaries of the surveyors by whom the examinations are conducted, were paid out of the Mercantile Marine Fund :

And whereas under section thirty-nine of the Merchant Shipping Act, 1876, the salaries of the said surveyors are paid out of moneys provided by Parliament ; and it is expedient that the fees should be paid into the Exchequer ; be it therefore enacted as follows :

The fees paid in pursuance of section seven of the Merchant Shipping Act Amendment Act,

1862, shall cease to be carried to the account of the Mercantile Marine Fund and shall be paid into the Exchequer.

5. All expenses incurred by general lighthouse authorities in pursuance of the Removal of Wrecks Act, 1877, shall be subject to the provisions contained in sections four hundred and twenty-two, four hundred and twenty-three, and four hundred and twenty-seven of the Merchant Shipping Act, 1854.

6. Such reasonable costs as the Board of Trade from time to time allow of advertising or otherwise making known the establishment of or alterations in foreign lighthouses, buoys, and beacons to owners and masters of and other persons interested in British ships shall be paid out of the Mercantile Marine Fund.

7. Any payment made or forfeiture remitted or thing done before the passing of this Act which, if this Act had passed, would be legal, shall be deemed to have been legally made, remitted, or done.

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## CHAP. 23.

### *Elementary Education Act, 1880.*

#### ABSTRACT OF THE ENACTMENTS.

1. *Short title and construction.*
2. *Obligation to make byelaws as to the attendance of children at school.*
3. *Power of school attendance committee to make byelaws.*
4. *Enforcing of byelaws.*
5. *Amendment of 39 & 40 Vict. c. 79. s. 40 as to education being condition of relief to parents of children.*
6. *Repeal.*

#### SCHEDULE.

An Act to make further provision as to Byelaws respecting the attendance of Children at School under the Elementary Education Acts.

(26th August 1880.)

WHEREAS a school attendance committee within the meaning of the Elementary Education Act, 1876, are authorised to make byelaws respecting the attendance of children at school under section seventy-four of the Elementary

Education Act, 1870, as if such school attendance committee were a school board, but a school attendance committee for a union cannot make byelaws respecting any parish in their union, except on the requisition of the parish ; and it is expedient to make further provision for the making of byelaws respecting the attendance of children at school :

And whereas it is expedient otherwise to amend the Elementary Education Act, 1876, in respect of byelaws :

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and

consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as the Elementary Education Act, 1880, and shall be construed as one with the Elementary Education Act, 1876, and that Act and this Act may be cited together as the Elementary Education Acts, 1876 and 1880.

2. It shall be the duty of the local authority (within the meaning of the Elementary Education Act, 1876,) of every school district in which byelaws respecting the attendance of children at school under section seventy-four of the Elementary Education Act, 1870, are not at the passing of this Act in force, forthwith to make byelaws under that section for such district.

If at any time after the thirty-first day of December one thousand eight hundred and eighty it appears to the Education Department that in any school district there are no byelaws under that section in force, the Education Department may either proceed under section twenty-seven of the Elementary Education Act, 1876, (which relates to a local authority who fail to fulfil their duty under that Act,) or may make byelaws respecting the attendance of children at school in that district, and the byelaws so made shall have effect and be enforced and be subject to revocation and alteration as if they had been made by the local authority for that district and sanctioned by the Education Department in pursuance of section seventy-four of the Elementary Education Act, 1870: Provided that where in a school district in which byelaws are not in force a byelaw is made in pursuance of this section, that byelaw shall not prevent a child who, at the date of the byelaw taking effect, is employed in accordance with the Elementary Education Act, 1876, from continuing to be so employed.

3. The school attendance committee for a union comprising a parish may, in pursuance of section twenty-one of the Elementary Education Act, 1876, without the requisition of the parish, make byelaws under section seventy-four of the Elementary Education Act, 1870, respecting the attendance of children at school.

4. Every person who takes into his employment a child of the age of ten and under the age of thirteen years resident in a school district, before that child has obtained a certificate of having reached the standard of education fixed by a byelaw in force in the district for the total or partial exemption of children of the like age from the obligation to attend school, shall be deemed to take such child into his employment in contravention of the Elementary Education Act, 1876, and shall be liable to a penalty accordingly.

Proceedings may, in the discretion of the local authority or person instituting the same, be taken for punishing the contravention of a byelaw, notwithstanding that the act or neglect or default alleged as such contravention constitutes habitual neglect to provide efficient elementary education for a child within the meaning of section eleven of the Elementary Education Act, 1876: Provided that nothing in this section shall prevent an employer from employing any child who is employed by him or by any other person at the time of the passing of this Act, and who attends school in accordance with the provisions of the Factory and Workshop Act, 1878.

5. Notwithstanding anything contained in section forty of the Elementary Education Act, 1876, a child shall not, as a condition of the continuance of relief out of the workhouse being continued to him or his parent, be required to attend school further or otherwise than he is required to attend by a byelaw in force under section seventy-four of the Elementary Education Act, 1870, as amended by the Elementary Education Act, 1876, and this Act, in the school district in which he is resident: Provided that this section shall not apply where there is no such byelaw in force in the school district.

6. The Elementary Education Act, 1876, shall be repealed to the extent and from the times in the third column of the schedule to this Act mentioned, without prejudice to anything previously done or suffered, or any order previously made, or any right or title or liability acquired, accrued, or incurred in pursuance of any enactment hereby repealed; and any such thing, order, right, and title and liability may be enforced, and any proceeding then pending for such enforcement may be carried on, as if such enactment had not been repealed.



## SCHEDULE.

## ENACTMENTS REPEALED.

Session and Chapter.	Short Title.	Extent of Repeal.
39 & 40 Vict. c. 79.	The Elementary Education Act, 1876.	In section twenty-one, the words "may if they think fit" and the words "on the requisition of the parish, but not otherwise," as from the passing of this Act. Section twenty-two, as from the passing of this Act. Sections fifty-one and fifty-two, as from the passing of this Act. First Schedule, as from the first of January one thousand eight hundred and eighty-one, from "During the four years next after" down to "higher standard required for that year" both inclusive (being paragraph (3).) and from "Provided that in each of the four years next after" down to the end of the table, both inclusive (being paragraph 6).

## CHAP. 24.

*Spirits Act, 1880.*

## ABSTRACT OF THE ENACTMENTS.

*Preliminary.*

1. *Short title.*
2. *Commencement.*
3. *Definitions.*
4. *Division into Parts.*

## PART I.

## SPIRITS OTHER THAN METHYLATED SPIRITS.

*General.*

5. *Prohibition of distilling, &c. without licence.*
6. *Liabilities of person having wash and a still.*
7. *As to capacity, &c. of still in England.*
8. *Condition for grant of licence for still of less than 400 gallons.*

*Distiller's Premises.*

9. *Distillery to be within quarter of a mile of market town, except on terms as to lodgings for officers.*
10. *Distillery not to be within quarter of a mile of rectifier's premises.*
11. *Premises of distiller not to be connected with premises of brewer, &c.*
12. *Power to refuse licence to brewer, &c.*

*Distiller's Spirit Store and Utensils.*

13. *Provision and securing of spirit store.*
14. *Scheduled rules with respect to vessels, &c. in distillery.*
15. *Alterations of vessels, utensils, and pipes.*
16. *Power of Commissioners to allow use of additional or substituted vessels, &c.*
17. *Penalty for interference with, or attempt to defeat gauging.*
18. *Penalty for frauds and offences in relation to fittings.*

*Distiller's Entry.*

19. *Time and mode of making entry.*
20. *Continuance of entry.*

*Materials for Distillation.*

21. *Materials for brewing and distillation.*
22. *Distiller to use only wort made in his distillery.*
23. *Use of sugar.*

*Brewing and Distilling.*

24. *Unlawful hours for brewing and distilling.*
25. *Brewing and distilling periods.*
26. *Notice in the case of a distiller commencing or recommencing business.*
27. *Notice in the ordinary course of business to be given before each brewing.*
28. *Declaration as to wort.*
29. *Penalty for excess of wort or wash beyond that specified in declaration.*
30. *Penalty for excess of wort or wash on comparison of accounts.*
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**An Act to consolidate and amend the Law relating to the Manufacture and Sale of Spirits. (26th August 1880.)**

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

*Preliminary.*

1. This Act may be cited as the Spirits Act, 1880.

2. This Act shall come into operation on the first day of January one thousand eight hundred and eighty-one, which date is in this Act referred to as the commencement of this Act.

3. In this Act each of the following terms shall have the meaning assigned to it by this section, unless it is otherwise expressly provided, or there is something in the subject or context inconsistent with such meaning,—

"Spirits" means spirits of any description, and includes all liquors mixed with spirits, and all mixtures, compounds, or preparations, made with spirits :

"Low wines" means spirits of the first extraction conveyed into a low wines receiver :

"Feints" means spirits conveyed into a feints receiver :

"British spirits" means spirits liable to a duty of excise :

"Plain spirits" means any British spirits, (except low wines and feints,) which have not had any flavour communicated thereto or ingredient or material mixed therewith :

"Spirits of wine" means rectified spirits of the strength of not less than forty-three degrees above proof :

"British compounds" means spirits redistilled or which have had any flavour communicated thereto, or ingredient or material mixed therewith :

"Foreign spirits" means all spirits and strong waters liable to a duty of Customs :

"Sugar" includes any saccharine substance or syrup manufactured from any material from which sugar can be manufactured :

"Commissioners" means the Commissioners of Inland Revenue :

"Methylate" means to mix spirits with some substance in such manner as to render the mixture unfit for use as a beverage, and "methylated spirits" means spirits so mixed to the satisfaction of the Commissioners :

"Proof" means the strength of proof as ascertained by Sykes's hydrometer :

"Still" includes any part of a still, and any distilling apparatus whatever for distilling or making spirits :

"Distiller," "rectifier," "dealer," and "retailer," mean respectively a person who distils, rectifies, or compounds, deals in, or retails spirits :

"Excise trader" means any person carrying on a business subject to any of the regulations of this Act, and includes a maltster who makes malt duty free for distillation and any proprietor or occupier of an excise warehouse :

"Licence" means a licence granted by the Commissioners or by an officer duly authorised by them; and "licensed," as applied to an excise trader, means a person holding a licence so granted for the purpose of his business :

"Premises," when used with reference to an excise trader, means any building or place used by him in the course of his business, and of which entry is required to be made :

"Prescribed" and "approved" mean respectively prescribed or approved by the Commissioners :

"Warehouse" means any warehouse approved or provided for the deposit of spirits :

"Distiller's warehouse" means an approved warehouse on the premises of a distiller :

"Excise warehouse" means a warehouse approved or provided by the Commissioners as a general warehouse for the deposit of spirits :

"Customs warehouse" means a warehouse approved or provided by the Commissioners of Customs for the deposit of spirits :

"Collector" means the collector of Inland Revenue, and in connexion with the business of an Excise trader means the collector for the collection in which the premises of the trader are situate, and includes a person acting as such collector :

"Officer" means officer of Inland Revenue :

"Proper officer" means the officer of the division or ride in which the business of an Excise trader is carried on, or in which anything is by this Act required to be done by, or any notice to be given to, such officer, and includes a person acting as such officer, and also any officer superior in matters of Excise to such officer :

"Writing" includes print, and "written" includes printed :

"Justice" means a justice of the peace or a magistrate having jurisdiction for the

county or place where any offence is committed or suspected to have been committed, or any offender is apprehended or found, or any goods or commodities are seized or liable to seizure or suspected to be so liable :

“County or place” includes a city, county of a city, county of a town, borough, liberty, division, franchise, or other place of magisterial jurisdiction :

“Schedule” means schedule to this Act.

4. This Act is divided into Parts, as follows :—

Part I.—Spirits other than Methylated Spirits.

Part II.—Methylated Spirits.

Part III.—Supplemental.

### PART I.

#### SPIRITS OTHER THAN METHYLATED SPIRITS.

##### *General.*

5. (1.) No person may, without being licensed to do so, or on any premises to which his licence does not extend—

(a.) Have or use a still for distilling, rectifying, or compounding spirits ; or

(b.) Brew or make wort or wash, or distil low wines, feints, or spirits ; or

(c.) Rectify or compound spirits.

(2.) If any person contravenes this section he shall for each offence incur a fine of five hundred pounds, and all spirits, and vessels, utensils, and materials for distilling or preparing spirits in his possession shall be forfeited.

6. Every person who makes or keeps wash prepared or fit for distillation, or low wines or feints, and has in his possession or use a still, shall, as respects the duties, penalties, and forfeitures imposed by law on distillers, be deemed to be a distiller.

7. (1.) In England if a distiller keeps or uses a still of which the body, without the head, is of less capacity than three thousand gallons he must not keep or use in his distillery at the same time more than two wash stills and two low wine stills.

(2.) For every still kept or used in contravention of this section the distiller shall incur a fine of one hundred pounds, and a further fine of one hundred pounds for every time that any such still is used ; and every still kept or used in contravention of this section shall be forfeited.

8. (1.) A person shall not have a licence to keep a still of less capacity than four hundred gallons,

unless he has in use a still of that capacity, or produces to the Commissioners a certificate, signed by three justices for the county or place, that he is a person of good character, and fit and proper to be licensed to keep such a still, and that the premises in which he proposes to erect the still and of which he is in actual possession, are of the yearly value of ten pounds at least.

(2.) If the still is intended to be kept by persons in partnership, a certificate to the above effect with regard to one of the partners shall be sufficient.

(3.) The Commissioners may, if they think fit, refuse to grant the licence, notwithstanding the production of the justices' certificate ; but, in case of refusal, they shall state the grounds thereof, in writing signed by them, to the justices.

##### *Distiller's Premises.*

9. (1.) A person shall not be entitled to a licence for, or be permitted to make entry of, a distillery, unless it is situate in or within a quarter of a mile of a market town.

(2.) The Commissioners may, if they think fit, grant a licence for, and permit entry to be made of, a distillery situate beyond these limits, on the terms of the distiller providing to their satisfaction lodgings for the officers to be placed in charge of the distillery.

(3.) The lodgings must be conveniently situate and must not form part of the distillery or of the distiller's dwelling-house, and the rent charged for them, unfurnished, must not exceed fifteen pounds a year.

(4.) If a distiller to whom a licence is granted on these terms fails to provide the lodgings, or to keep them in repair, or interrupts or annoys any officer residing therein in his use or enjoyment thereof, the Commissioners may suspend or revoke his licence.

10. (1.) No person may make entry of or use for brewing or making wort, or wash, or for distilling spirits, or for receiving or keeping spirits as a distiller, any premises within a quarter of a mile of any premises entered or used for rectifying or compounding spirits, or for receiving or keeping spirits by a rectifier.

(2.) If any person contravenes this section he shall incur a fine of five hundred pounds for every week during which the premises are so entered or used.

11. (1.) A distiller may not carry on upon his premises the business of a brewer of beer, or a maker of sweets, vinegar, cider, or perry, of a refiner of sugar, or of a dealer in or retailer of wine.

(2.) No person may carry on the business of a distiller upon premises communicating otherwise than by an open public street or carriage road with any premises used by a brewer of beer, or a maker of sweets, vinegar, cider, or perry, or a refiner of sugar, or a dealer in or retailer of spirits or a dealer in or retailer of wine.

(3.) If any person contravenes any of the foregoing provisions of this section he shall incur a fine of two hundred pounds.

(4.) The Commissioners may refuse to grant a licence for distilling spirits in any premises in which, from their situation with respect to premises used for rectifying or compounding spirits, or to a brewery or vinegar manufactory, they think it inexpedient to allow the distilling of spirits.

12. The Commissioners may refuse to grant a licence to brew beer, or to make vinegar, on any premises in which, from their situation with respect to a distillery, they think it inexpedient to allow the brewing of beer or making of vinegar to be carried on.

#### *Distiller's Spirit Store and Utensils.*

13. (1.) Every distiller must, to the satisfaction of the Commissioners, provide a spirit store and cause it to be properly secured.

(2.) The spirit store must be kept locked by the officer in charge of the distillery at all times except when he is in attendance.

(3.) If a distiller fails to provide or secure a spirit store as by this section required, the Commissioners may, until it is so provided and secured, refuse to grant him a licence, or suspend or revoke his licence.

14. (1.) Every distiller must observe the rules contained in the First Schedule.

(2.) For any contravention of the rules in the First Schedule penalties shall be incurred as follows :

(a.) If there is found in a distillery any vessel in excess of the number permitted by the rules in the second part of the First Schedule, the vessel, with its contents, shall be forfeited, and the distiller shall incur a fine of two hundred pounds.

(b.) For any contravention of the rules contained in the third part of the First Schedule the distiller shall incur a fine of two hundred pounds, and an additional fine of twenty pounds for every day during which the contravention continues.

(c.) For any contravention of the rules contained in the fourth, seventh, or eighth part of the First Schedule the distiller

shall incur a fine of two hundred pounds.

(d.) For any contravention of the rules contained in the fifth, sixth, or tenth part of the First Schedule, the distiller shall incur a fine of fifty pounds.

(e.) Every cask not marked as required by the rules contained in the ninth part of the First Schedule shall, with its contents, be forfeited.

(f.) For any contravention of the rules contained in the eleventh part of the First Schedule, the wash, low wines, feints, or spirits in respect of which the rules are contravened shall be forfeited, and the distiller shall incur a fine of two hundred pounds, or, at the election of the Commissioners, of twenty shillings for every gallon of such wash, low wines, feints, or spirits.

15. (1.) A distiller may, on giving to the proper officer two days previous notice in writing of his intention, specifying the vessel, utensil, or pipe intended to be altered, moved, or added, alter or move any entered vessel, utensil, or pipe, or add a new vessel, utensil, or pipe.

(2.) Every such new vessel, utensil, or pipe must be duly entered.

(3.) If a distiller, without giving such notice, alters, moves, or adds to the vessels, utensils, or pipes on his premises after entry has been made thereof, or the capacity thereof has been ascertained by the proper officer, he shall for each offence incur a fine of two hundred pounds.

16. The Commissioners may permit any distiller to fix and use, subject to such regulations as they prescribe, any vessel, utensil, or fitting, in addition to or instead of any of those required by this Act, and may from time to time withdraw any such permission. This Act shall apply to any such additional or substituted vessel, utensil, or fitting as if its use were permitted or required by this Act.

17. If on the premises of any distiller any attempt is made or device used to prevent or hinder an officer from ascertaining the gravity, quantity, or strength of the wort, wash, low wines, feints, or spirits in any vessel, or whilst running, or to deceive him in taking the dip or gauge of any vessel or utensil, the distiller shall for each offence incur a fine of two hundred pounds.

18. If a distiller—

(a.) Places, affixes, or makes any cock, plug, pipe, or opening in, on, to, into, or from any vessel or utensil in contravention of this Act; or

(b.) Causes or procures any cover, fastening, cock, plug, pump, or pipe to be so made or used that any vessel or utensil may be employed, opened, removed, filled, or emptied in the absence of an officer, or as in any manner to avoid or defeat the security intended to be provided by this Act,  
he shall for each offence incur a fine of five hundred pounds.

*Distiller's Entry.*

19. (1.) Every distiller must, before he begins to brew any wort, make entry of the vessels, utensils, fittings, and places intended to be used by him, by signing and sending or delivering to the proper officer an account in the prescribed form, setting forth with the prescribed particulars—

- (a.) His name and abode, and the situation of the premises intended to be entered; and
  - (b.) A true and particular description of every vessel and utensil intended to be used on those premises for the purpose of his business; and
  - (c.) Either—
    - (i.) The number of gallons which every still, with its head, is capable of containing; or
    - (ii.) The number of gallons of wash per hour which every still is capable of distilling; and
  - (d.) The purpose for which each such vessel and utensil is intended to be used; and
  - (e.) Every house, room, and place in which any part of his business is to be carried on, or any spirits are to be kept; and
  - (f.) The purpose for which each such house, room, or place is to be used.
- (2.) In the account every vessel, utensil, house, room, and place must be distinguished by the name and number painted thereon.
- (3.) No vessel, utensil, house, room, or place must be described in the account as intended to be used for more than one purpose.
- (4.) There must be delivered with the account a drawing, model, or description distinctly showing the course, construction, and use of all fixed pipes to be used, and of every branch thereof and cock thereon, and every place, vessel, or utensil with which any such pipe communicates.
- (5.) If a distiller makes entry of any vessel, utensil, house, room, or place as intended to be used for more than one purpose, he shall for each offence incur a fine of two hundred pounds.
- (6.) If any vessel, utensil, fitting, house, room, or place used by a distiller, for any purpose connected with his business,—

- (a.) is not specified in the account required to be delivered on making entry; or

- (b.) is not numbered as so specified; or
  - (c.) is in any other place, or used or applied for any other purpose, than as so specified; or
  - (d.) does not in all respects correspond with the representation thereof as so specified;
- the distiller shall, for each offence, incur a fine of five hundred pounds, and every such vessel or utensil, with its contents, and all spirits or materials for distilling spirits found in any such place, shall be forfeited.

20. An entry must not be withdrawn whilst there remains in any place mentioned therein, any still, or in any place, vessel, or utensil mentioned therein, any materials preparing or fit for distillation, or any spirits liable to duty.

*Materials for Distillation.*

21. A distiller may use in the brewing or making of wort or wash any material of such nature that the gravity of the wort or wash produced therefrom can be ascertained by the prescribed saccharometer.

22. (1.) A distiller must not distil spirits except from wort or wash brewed or made in his distillery.

(2.) If a distiller has in his possession any wort, wash, low wines, feints, or fermented liquor not brewed, made, or distilled in his distillery, he shall forfeit the same, and also incur a fine of two hundred pounds.

23. (1.) A distiller must not, without the consent of the Commissioners, remove any sugar from the place entered as a sugar store, except for use in the manufacture of spirits.

(2.) Not less than four hours before removing any sugar for this purpose, he must give the officer in charge of the distillery written notice, specifying the time of the intended removal, and the quantity to be removed.

(3.) At the time so specified, the distiller must convey the specified sugar immediately from the sugar store to the mash tun or other entered vessel, to be there immediately used in the manufacture of spirits.

(4.) He must forthwith deposit again in the sugar store all sugar so removed and not so used.

(5.) If a distiller contravenes this section he shall for each offence incur a fine of fifty pounds.

*Brewing and Distilling.*

24. A distiller must not mash any materials, or brew, or make wort or wash, or use a still,

between eleven o'clock in the afternoon of Saturday and one o'clock in the forenoon of Monday.

If a distiller contravenes this section he shall incur a fine of fifty pounds.

25. (1.) The period of brewing or making wort or wash (in this Act called the brewing period), and the period of distilling spirits (in this Act called the distilling period) must, in every distillery, be alternate and distinct.

(2.) The brewing period extends from the commencement of any process of wetting, brewing, or mashing any materials until all the wort or wash in the distillery has been collected in the fermenting backs and wash chargers, and the declaration required by this Act of such collection has been given.

(3.) The distilling period extends from the commencement of the distillation of any wash until all the wash, low wines, and feints in the distillery, or in the possession of the distiller, (except the feints produced by the last re-distillation,) have been distilled into spirits and conveyed into the spirits receiver, and each furnace door, or the steam pipe of each still, has been secured by the officer in charge of the distillery.

(4.) Except as by this Act provided, a distiller must not use any still before the expiration of two hours after the end of the brewing period.

(5.) Except as by this Act provided, a distiller must not mash any materials or brew or make any wort or wash during the distilling period.

(6.) A distiller may, immediately after all the wash in his possession has been removed into a wash charger, begin to brew wort, but only on condition that all the wash so removed be forthwith distilled, and that every still be worked off and secured within the following times; (that is to say,) in the case of a low wines still, within thirty-two hours from the time when the wash was removed into the wash charger, and in the case of any other still within sixteen hours from that time.

(7.) If a distiller contravenes this section he shall for each offence incur a fine of five hundred pounds.

26. (1.) Every distiller must, at least six days before beginning to brew wort, or, if he has discontinued brewing wort for more than one month, before recommencing to brew wort, give the proper officer a written notice, specifying the day on which he intends so to brew or recommence brewing.

(2.) If a distiller contravenes this section, or if any wort or wash is found in the distillery or possession of a distiller before the notice required by this section is given, or before the day specified in the notice given by him, or if there is found in his possession any wort or wash which he may

not lawfully have in his possession, he shall for each offence incur a fine of two hundred pounds, and forfeit all wort or wash so found.

27. A distiller must, at least four hours before he mashes any materials or brews for making wort, give the officer in charge of the distillery written notice specifying the day and hour when the mashing or brewing is to be commenced.

If a distiller mashes or brews without giving such notice, he shall incur a fine of fifty pounds.

28. (1.) All wort must be collected into the fermenting back within eight hours after it has begun to run into the back.

(2.) Immediately after the wort is so collected the distiller must deliver to the officer in charge of the distillery a written declaration specifying—

(a.) The number of the back in which the wort is contained; and

(b.) The gravity or (if yeast has been added) the original gravity of the wort; and

(c.) The quantity thereof as measured by the number of dry inches, that is to say, by the number of inches between the dipping place of the back and the surface of the wort contained therein.

(3.) If a distiller makes default in complying with the provisions of this section, or if the declaration delivered by him contains any untrue statement, he shall for each offence incur a fine of two hundred pounds.

29. If after the declaration has been delivered the gravity of the wort shall be found to exceed the gravity therein specified or the quantity of the wort or wash shall be found to exceed by five per centum the quantity of wort therein specified, the distiller shall incur a fine of two hundred pounds.

30. If after an officer has taken an account of the gravity or quantity of the wort or wash in a fermenting back any wort or wash is found in the back which exceeds in gravity, or exceeds by five per centum in quantity, the wort or wash of which the account has been taken, the following consequences shall ensue:

(a.) All wort or wash found in the back shall be considered as new, and as not included in any former charge against the distiller; and

(b.) The distiller shall be charged with duty in respect of the whole thereof as not being before charged; and

(c.) The wort or wash of which account had previously been taken shall be deemed to be distilled or decreased, and the distiller shall be charged for a quantity of spirits in respect thereof as for wort

or wash actually distilled or decreased ;  
and

- (d.) The distiller shall incur a fine of two hundred pounds.

31. A distiller must not add yeast or other matter capable of causing fermentation to wort or wash in any vessel except a fermenting back.

If a distiller contravenes this section he shall incur a fine of two hundred pounds.

32. (1.) A distiller may, subject as in this section mentioned, either remove yeast from the wort or wash in a fermenting back, or leave the yeast and sediment in a back, and remove the wort or wash to an empty back.

(2.) The quantity of yeast removed from or the quantity of yeast and sediment left in any one back, must not exceed eight per centum of the wort or wash in the back.

(3.) If yeast is removed from and yeast and sediment left in the same back, the total quantity of yeast removed and yeast and sediment left must not exceed the same proportion.

(4.) Four hours before removing any wort or wash the distiller must give the officer in charge of the distillery written notice specifying the backs from which and to which the wort or wash is to be removed.

(5.) No wort or wash may be removed from a back until an account thereof has been taken by the officer.

(6.) In calculating duty no abatement shall be made on account of any yeast removed from or yeast and sediment left in any back.

(7.) A distiller may manufacture in his distillery into a solid substance any yeast removed from, or any yeast and sediment left in a back under this section, and may send out of his distillery or add to the wort or wash in any back therein, any such yeast or sediment, whether so manufactured or not.

33. (1.) A distiller must, at least four hours before beginning to make bub or any other composition for promoting the fermentation of wort or wash give the officer in charge of the distillery written notice, specifying the time when and the vessel in which the composition is to be made, the fermenting back into which it is to be put, and the quantity to be put into such back.

(2.) The quantity of the composition must not exceed five per centum of the wort or wash to which it is added.

(3.) The gravity of the composition must not exceed sixty degrees, and must not be increased after the officer has taken an account thereof.

(4.) The whole of the composition must be conveyed into the back specified in the notice

within twenty-four hours after the time therein specified for making the composition.

(5.) If a distiller contravenes any provision of this section he shall, for each offence, incur a fine of two hundred pounds.

34. (1.) When fermentation has ceased in a fermenting back a distiller may, during the brewing period, on giving the notice required by this Act before the removal of wash, remove the whole of the wash from the back to the wash charger, and refill the back with fresh wort.

(2.) The wash so removed must be secured in the wash charger until the commencement of the distilling period.

35. (1.) When the whole of the wort or wash made in a distillery during one brewing period is collected into the fermenting backs or into the fermenting backs and wash charger, the distiller must give the officer in charge of the distillery a written declaration to that effect.

(2.) If the declaration is untrue in any particular, or any still in the distillery is used before the expiration of two hours after the delivery thereof, the distiller shall incur a fine of two hundred pounds.

36. If the original gravity of any wort or wash as ascertained from any sample of wash taken from a fermenting back or wash charger exceeds by more than two degrees the gravity thereof as declared by the distiller, he shall incur a fine of two hundred pounds, and a further fine of sixpence for every gallon of wash contained in the vessel from which the sample was taken.

37. (1.) The gravity of wort or wash shall be ascertained by the prescribed saccharometer, and in calculating the same a degree of gravity shall be taken as equal to one thousandth part of the gravity of distilled water at sixty degrees Fahrenheit.

(2.) To ascertain the original gravity of the wort from which wash is made, a definite quantity by measure of the wash must be distilled, and the distillate and spent wash each made up with distilled water to the original measure of the wash before distillation.

(3.) The specific gravity of each must then be ascertained.

(4.) The number of degrees and parts of a degree by which the specific gravity of the distillate is less than the specific gravity of distilled water shall be deemed the spirit indication of the distillate.

(5.) The specific gravity of the spent wash added to the degree of original gravity which in Table A. in the Second Schedule is set opposite

the degree of spirit indication shall be deemed the original gravity of the wort.

(6.) All weighings and measurements for any of the above purposes must be made when the liquid is at sixty degrees Fahrenheit.

(7.) The distiller or any person acting on his behalf may, if the distiller so desires, be present at any such process for ascertaining original gravity.

38. (1.) Four hours before any wash is removed from a fermenting back, the distiller must give the officer in charge of the distillery written notice specifying the number of the back, and the day and hour of the intended removal.

(2.) At the time so specified the officer shall attend, and after he has locked the discharge cock of the wash charger, and removed the fastenings which prevent the passage of the wash from the back to the charger, but not before, the whole of the wash, or, if the charger is not capable of containing the whole, then one half at least, must be removed from the back to the charger.

(3.) When the wash has been so removed and the fastenings have been secured, the officer may take an account of the quantity and the gravity of the wash.

(4.) After account has been so taken of the contents of a wash charger, no wash may be removed from a back into the same charger before the whole of the contents of that charger have been removed into the still or intermediate charger.

(5.) The produce of all or any of the backs filled in the same brewing period may be collected in the receivers for such produce.

(6.) Subject to the provisions of this section as to feints remaining from a previous distillation, all produce so collected must, throughout the whole course of its distillation, and until the removal to the spirit store of the spirits produced therefrom, be kept unmixed with any other matter, and separate from all other produce.

(7.) Any feints produced by and remaining from a previous distillation may be mixed with the low wines or feints produced by a subsequent distillation, and the process of re-distilling feints may be repeated as often as the distiller thinks fit.

(8.) Not less than four hours before the removal of any low wines, feints, or spirits from a receiver, the distiller must give the officer in charge of the distillery written notice specifying the day and hour of the intended removal.

(9.) At the time so specified the officer shall attend, and after he has taken an account of the contents of the receiver, and removed the fastenings of its pump or discharge cock, but not before, the whole contents of the receiver must

be forthwith removed therefrom, and conveyed, if low wines or feints, into the proper charger, but if spirits, into a vat or cask in the spirit store.

(10.) After the fastenings have been so removed, no other low wines, feints, or spirits may be conveyed into the receiver until the whole of its contents have been removed therefrom and the fastenings again secured.

(11.) If a distiller contravenes any of the foregoing provisions of this section he shall, for each offence, incur a fine of two hundred pounds.

(12.) Where a distiller has secured his low wines and feints pumps to the satisfaction of the Commissioners he may run low wines and feints together into the same receiver, and may at any time without notice remove low wines and feints from a receiver to a charger and re-distil them.

(13.) Where a still is connected with two spirit receivers the distiller may collect in each receiver alternately the spirits produced from any distillation or re-distillation, and when he has run into either receiver as much spirits as he thinks fit, he shall give notice to the officer, who shall thereupon lock the charging cock. No spirits may be removed from any such receiver until the expiration of two hours from such notice, nor except after the notice of removal required by this section.

39. At the end of every distilling period the distiller, or the principal manager of the distillery, must sign and deliver to the proper officer a return in the prescribed form specifying, with respect to the brewing and distilling period—

- (a.) The quantity of each description of material used in making wort or wash during the period; and,
- (b.) The quantity of wort or wash decreased or distilled during the period; and,
- (c.) The quantity of spirits computed at proof produced during the period; and,
- (d.) The quantity of feints remaining at the end of the period.

If default is made in making the return required by this section, or if the return is untrue in any particular, the distiller shall incur a fine of two hundred pounds.

40. (1.) For the purpose of testing the quantity of spirits at proof in any wash by distillation, the proper officer may require any charger or receiver in a distillery to be emptied and cleaned, and any quantity of the wash to be distilled, and the produce to be conveyed into the charger or receiver. For this purpose all persons in the employ of the distiller must, on request and on reasonable notice, provide the officer with assistance and fuel.

(2.) All low wines, feints, and spirits so dis-

tilled and conveyed into a charger or receiver must be kept therein unmixed with any other thing until the officer has taken an account of the quantity and strength thereof.

(3.) If a distiller contravenes any of the foregoing provisions of this section, he shall incur a fine of two hundred pounds.

(4.) If the quantity of proof spirits produced from the wash exceeds the proportion of one gallon and a quarter for every hundred gallons of wash in respect of every five degrees of attenuation, (that is to say,) in respect of every five degrees of difference between the highest gravity of the wort from which the wash was produced as declared by the distiller or as found by the officer, and the lowest gravity of the wash as taken by the officer, the distiller shall incur a fine of two hundred pounds, and, in addition, of sixpence for every gallon of wash from which the wash so distilled was taken.

41. (1.) There must not be mixed with or added to any low wines, feints, or spirits in a distillery any substance which either increases the gravity thereof, or prevents the true strength thereof from being ascertained by Sykes's hydrometer.

(2.) If this section is contravened, the distiller shall, for each offence, incur a fine of two hundred pounds, and all low wines, feints, spirits, and mixtures with respect to which the offence is committed shall be forfeited.

#### *Samples.*

42. (1.) An officer may take a sample of any wort, wash, low wines, feints, or spirits from any vessel or utensil in a distillery, and the gravity or strength of any sample so taken shall be deemed the gravity or strength of the whole contents of the vessel or utensil from which it is taken.

(2.) A distiller may, if he wishes, before any such sample is taken, stir up and mix together all the liquor contained in the vessel or utensil from which the sample is to be taken.

#### *Spirits in Store.*

43. (1.) No spirits may be brought into a distiller's spirit store unless they have been distilled in his distillery, and conveyed directly from the spirit receiver into the store.

(2.) No spirits which have been removed from the store may be brought back into the store.

(3.) The officer in charge of the store must, when required, attend at the store between five o'clock in the forenoon and eight o'clock in the afternoon on every day, except Sunday.

(4.) All spirits in the store must be filled into

casks, in the presence of the officer, in the prescribed manner.

(5.) Spirits may not be removed from the store at any less strength than twenty per centum below proof, nor at any strength above twenty-five and under forty-three per centum over proof.

(6.) Spirits may not be removed from the store in any quantity less than nine gallons.

(7.) The casks in which spirits are removed may be either full or, subject to the prescribed regulations, on ullage.

(8.) All the spirits distilled in one distilling period (except a quantity not exceeding one hundred and fifty gallons, and in one ullage cask) must be removed from the store within ten days from the termination of that period, and before any spirits distilled in a succeeding period are brought into the store.

(9.) When all the spirits distilled in one distilling period have been removed from the spirit store, or at the end of ten days from the termination of that period, whichever first happens, the proper officer shall strike a balance in the account kept by him for the distillery.

(10.) If any spirits are brought into or found in or removed from a distiller's spirit store in contravention of this section the distiller shall, for each offence, incur a fine of two hundred pounds, and the spirits in respect of which the offence is committed shall be forfeited.

(11.) If any spirits are found in a distiller's spirit store after the time at which they are required by this section to be removed therefrom, the distiller shall incur a fine of twenty shillings for every gallon of spirits so found.

(12.) Every distiller must, to the satisfaction of the Commissioners, provide accommodation at his spirit store for the officer in charge thereof, and, in default of doing so, shall incur a fine of fifty pounds.

44. (1.) The proper officer shall from time to time take an account in the prescribed manner of the quantity of spirits in a distiller's spirit store.

(2.) If the quantity of spirits computed at proof found in the store is greater or less than the quantity which, according to the account so taken, ought to be therein, the distiller shall incur a fine of twenty shillings for every gallon of spirits so in excess or deficient, and the spirits (if any) in excess shall be forfeited.

(3.) But a distiller shall not be liable to any penalty under this section if the excess does not exceed one half per centum, or the deficiency three per centum on the balance struck when the account was last taken, together with the quantity since brought in from the spirit receiver, nor if he satisfies the Commissioners that the deficiency does not result from fraud.

(4.) Where there is an excess, and the distiller is not prosecuted in respect thereof, he shall pay duty on the excess.

45. Subject to the prescribed regulations and the prescribed security, spirits may be removed from a distiller's spirit store for exportation or for ship's stores without payment of duty.

#### *Charging and Payment of Duty.*

46. (1.) The duty on spirits made in a distillery is to be charged in respect of the wort or wash, the low wines, and the feints and spirits made in the distillery, and shall be payable according to such of those modes of charge as produces the greatest amount of duty.

(2.) In respect of every one hundred gallons of wort or wash the duty is to be charged for a quantity of spirits at the rate of one gallon of spirits at proof for every five degrees of attenuation, (that is to say,) for every five degrees of difference between the highest gravity of the wort as declared by the distiller or found by the officer (whichever is the greater) without any allowance for waste, bub, dregs, yeast, or other matter, and the lowest gravity of the wash as found by the officer before distillation.

(3.) In respect of low wines the duty is to be charged on the quantity of spirits at proof contained therein, less five per centum.

(4.) In respect of feints and spirits the duty is to be charged on the quantity of spirits at proof after deducting the feints (if any) remaining from a previous distillation and included in the account of feints and spirits last produced.

(5.) In calculating the duty payable on spirits an allowance shall be made for any deficiency occasioned by natural waste, subject to the following provisions—

(a.) The allowance shall not exceed one and a half per centum on the spirits removed from the receiver to the store.

(b.) If the deficiency exceeds three per centum on the spirits so removed no allowance whatever shall be made.

47. (1.) The proper officer shall from time to time make out in the prescribed manner and for the prescribed period a return of the quantity of spirits for which a distiller is chargeable, and of the duty payable thereon, and shall, if required in writing by the distiller, deliver to him, or leave at his distillery, a copy of this return signed by the officer.

(2.) If a distiller does not, within the prescribed time and in the prescribed manner, pay the duty with which he is charged in the return, he shall incur a fine of twenty pounds, and forfeit double the duty payable by him.

48. (1.) If any duty payable by a distiller remains unpaid after the time within which it is payable, the collector may, by warrant signed by him, empower any person to distrain all spirits, malt, or other materials for distilling spirits, vessels, and utensils belonging to the distiller or in any premises in the use or possession of the distiller, or of any person on his behalf or in trust for him, and also all spirits warehoused in the name of the distiller, and to sell the same by public auction, giving six days previous notice of the sale.

(2.) The proceeds of sale shall be applied in or towards payment of the costs and expenses of the distress and sale, and in or towards payment of the duties due from the distiller, or in respect of any spirits so warehoused and distrained and sold, and the surplus, if any, shall be paid to the distiller.

(3.) But in the event of any spirits or malt being so distrained the distiller may, at any time before the day appointed for the sale thereof, remove under permit the whole or any part thereof on paying to the collector, in or towards payment of the duty, the true value of the spirits or malt.

(4.) Permits for such removal shall on application be granted as if the distress had not been made.

#### *Warehousing.*

49. (1.) A distiller may provide a warehouse on his premises for warehousing spirits distilled on the same premises without payment of duty.

(2.) Every such warehouse must be approved by the Commissioners and entered by the distiller.

50. (1.) The Commissioners may approve Excise warehouses, for warehousing spirits without payment of duty. Such warehouses shall be for the general accommodation of persons desiring to warehouse spirits.

(2.) The proprietor or occupier of an Excise warehouse must give the prescribed security.

51. In the case of a distiller's warehouse or of an Excise warehouse, the distiller or the proprietor or occupier must, to the satisfaction of the Commissioners, provide accommodation at the warehouse for the officer in charge thereof, and in default of doing so shall incur a fine of fifty pounds.

52. (1.) The proprietor or occupier of a warehouse shall be alone responsible to the proprietor of any spirits warehoused therein for the safe custody of the spirits.

(2.) No action shall be brought against the Commissioners or any of their officers for loss or damage occasioned to spirits whilst warehoused

in such warehouse, or on account of any wrong or improper delivery of spirits therefrom.

53. The Commissioners may revoke their approval of a warehouse, and upon such revocation all spirits warehoused therein must be removed as the Commissioners direct, and no abatement of duty or allowance shall be made in respect of any such spirits for deficiency of quantity or strength after notice of the revocation has been given to the proprietor or occupier of the warehouse.

54. The Commissioners may, if they think fit, themselves provide Excise warehouses, and may charge for spirits warehoused therein warehouse rent at the prescribed rate, not exceeding one penny per week for forty gallons. This rent must be paid by the proprietor of the spirits to the collector, and shall be a lien on all spirits warehoused in the same warehouse belonging to such proprietor.

55. If any spirits warehoused in an Excise warehouse provided by the Commissioners are destroyed by fire, or by the falling of the warehouse or of any part thereof, no claim for compensation shall be brought against Her Majesty or the Commissioners or any of their officers in respect of the spirits destroyed, but no duty shall be payable in respect thereof.

56. (1.) A distiller may, subject and according to the provisions of this Act and to the prescribed regulations, and the prescribed security, warehouse, without payment of duty, in the distiller's warehouse any spirits distilled on his premises.

(2.) The spirits may be warehoused in casks or in vats.

(3.) The spirits must not be of any strength other than that allowed on removal from the spirit store.

57. Where a distiller has given the prescribed security under which he may remove spirits from one warehouse to another he may, subject to the provisions of this Act and to the prescribed regulations, remove any spirits directly from his store to an Excise or Customs warehouse, and all spirits so removed shall be deemed to have been first warehoused in the distiller's warehouse and removed therefrom under the provisions of this Act.

58. (1.) The casks in which spirits are warehoused by a distiller may be either full or on ullage, but each cask must contain not less than nine gallons, and on the outside of each end thereof there must be legibly cut, branded, or

painted with oil colours the mark, number, capacity, and contents of the cask and the year in which it is warehoused. All the casks warehoused in a distiller's warehouse or from the same distillery in any one year must be continuously numbered, beginning with number one for the cask first warehoused in such year.

(2.) A distiller must, not less than twenty-four hours before removing spirits from his store to his distiller's warehouse or an Excise warehouse, give the officer in charge of the store, and also the officer in charge of the warehouse, written notice of the day and hour when he intends to begin the removal.

(3.) He must, by the same notice, or by a further written notice given to each of these officers not less than one hour before the removal, specify the mark, number, and capacity of each cask which he intends to warehouse, and the number of gallons and the strength of the spirits contained in each cask.

(4.) All spirits removed at the same time from the store to warehouse must be of the same strength, and within one per centum of the strength specified in the notice.

(5.) The removal of spirits must not take place except on the day specified in the notice, nor except between the hours of eight o'clock in the forenoon and three o'clock in the afternoon.

(6.) The officer in charge of the warehouse shall give to the distiller a certificate in the prescribed form in relation to the spirits warehoused, and the certificate shall forthwith be delivered over to the officer in charge of the distillery.

(7.) In the case of spirits warehoused in a Customs warehouse the authorized officer of Customs at the warehouse shall give to the distiller a receipt in the prescribed form for the spirits, and the receipt shall be forthwith delivered over to the officer in charge of the distillery, who shall give to the distiller a copy thereof signed by him.

(8.) The officer in charge of the distillery, after the delivery of any such certificate or receipt, shall deduct from the number of gallons of spirits for which the distiller is chargeable with duty the number of gallons of spirits warehoused computed at proof.

(9.) If a distiller or any other person produces a receipt, purporting to express that spirits have been warehoused in a Customs warehouse, which receipt is untrue in any particular, he shall incur a fine of two hundred pounds.

59. The proprietor of any plain spirits re-imported into the United Kingdom may, on the issue by the Commissioners of Customs of a bill of store for the spirits, and on the repayment of the allowance granted on the exportation thereof, warehouse the spirits in an Excise or Customs warehouse.

60. All casks warehoused must be arranged and stowed in such manner that access can be easily had to each cask.

If a distiller or the proprietor or occupier of a warehouse fails to cause the casks therein to be so arranged and stowed he shall incur a fine of five pounds.

61. (1.) The proprietor of spirits warehoused may, in the presence of the officer in charge of the warehouse, view and examine the spirits, and show them for sale, and examine the state of the casks, and prevent leakage and drainage therefrom.

(2.) The officer shall, on request, attend at all reasonable times for this purpose, but not more than once in twenty-four hours.

62. Spirits in a distiller's warehouse may, on the prescribed security being given by the distiller, be transferred to a purchaser, but no further transfer may be made of them whilst remaining in the same warehouse.

63. British spirits warehoused in an Excise warehouse in the name of a distiller or dealer may be transferred into the name of a purchaser on his producing to the officer in charge of the warehouse a written order for the delivery thereof, signed by the proprietor of the spirits, and countersigned by the proprietor or occupier of the warehouse or his servant acting for him at the warehouse. Spirits so transferred shall be discharged from all claim in respect of duties, penalties, or forfeitures to which the transferor is liable, but may not be delivered out of the warehouse for home consumption until payment of the duties chargeable thereon.

64. (1.) The proprietor of spirits warehoused in a distiller's or Excise warehouse may, in accordance with the prescribed regulations, vat, blend, or rack them in the warehouse, either on payment of duty or otherwise.

(2.) Every cask containing racked or blended spirits must be marked in the prescribed manner.

(3.) If the proprietor of any racked or blended spirits in a warehouse fails to have the casks containing the spirits marked as by this section required, and to keep them so marked, he shall incur a fine of fifty pounds.

65. (1.) The Commissioners may require a distiller or a proprietor or occupier of an Excise warehouse to provide a separate room, secured to their satisfaction, for racking spirits on which duty has been paid.

(2.) The officer in charge of the warehouse shall keep an account of all spirits computed at proof belonging to a proprietor of spirits which shall be received into the room and lawfully sent out therefrom.

(3.) If at any time a greater quantity of spirits is found in the room than ought, according to the account, to be there, the excess shall be charged with duty.

(4.) If the excess amounts to more than one per centum of the quantity of spirits brought in since the last preceding account, it shall be forfeited, and the proprietor of the spirits shall incur a fine of twenty shillings for every gallon of the excess.

66. (1.) In any warehouse the duty shall be paid on any deficiency exceeding the amount which can be accounted for by natural waste or other legitimate cause before racking, and also on any deficiency exceeding one per centum which occurs during the operation.

(2.) If, after duty has been paid on any spirits, a portion thereof is racked or drawn off from the cask, no further abatement or allowance for deficiency shall be made in respect thereof whilst they remain in warehouse.

67. (1.) A distiller may, in an Excise warehouse specially approved for the purpose, and in accordance with the prescribed regulations, reduce with water any plain spirits of a strength not less than forty-three per centum over proof to any strength at which spirits may be removed from a distiller's spirit store.

(2.) The water used for this purpose must be supplied only through a service pipe and meter constructed, laid down, and fixed to the satisfaction of the Commissioners.

(3.) An allowance not exceeding one per centum shall be made on any deficiency occurring during the reduction.

68. (1.) The proprietor of spirits warehoused in an Excise warehouse may bottle the spirits on giving the officer in charge of the warehouse twenty-four hours previous notice of his intention to do so.

(2.) He must provide and give the prescribed security, and the place in which the spirits are to be bottled must be approved by the Commissioners, must be adjacent to the warehouse, and must not be situate in the same court or yard, or have any communication with the premises of a rectifier, dealer, or retailer.

(3.) If the spirits are for home consumption they must be drawn off into imperial or reputed quart or pint bottles, and packed in cases containing one dozen quart bottles or two dozen pint bottles each, or any number of dozens.

(4.) Each case must be fastened, secured, and marked in the prescribed manner in the bottling place.

(5.) Subject as aforesaid, spirits must be bottled, packed, and removed in accordance with the prescribed regulations.

in such warehouse, or on account of any wrong or improper delivery of spirits therefrom.

53. The Commissioners may revoke their approval of a warehouse, and upon such revocation all spirits warehoused therein must be removed as the Commissioners direct, and no abatement of duty or allowance shall be made in respect of any such spirits for deficiency of quantity or strength after notice of the revocation has been given to the proprietor or occupier of the warehouse.

54. The Commissioners may, if they think fit, themselves provide Excise warehouses, and may charge for spirits warehoused therein warehouse rent at the prescribed rate, not exceeding one penny per week for forty gallons. This rent must be paid by the proprietor of the spirits to the collector, and shall be a lien on all spirits warehoused in the same warehouse belonging to such proprietor.

55. If any spirits warehoused in an Excise warehouse provided by the Commissioners are destroyed by fire, or by the falling of the warehouse or of any part thereof, no claim for compensation shall be brought against Her Majesty or the Commissioners or any of their officers in respect of the spirits destroyed, but no duty shall be payable in respect thereof.

56. (1.) A distiller may, subject and according to the provisions of this Act and to the prescribed regulations, and the prescribed security, warehouse, without payment of duty, in the distiller's warehouse any spirits distilled on his premises.

(2.) The spirits may be warehoused in casks or in vats.

(3.) The spirits must not be of any strength other than that allowed on removal from the spirit store.

57. Where a distiller has given the prescribed security under which he may remove spirits from one warehouse to another he may, subject to the provisions of this Act and to the prescribed regulations, remove any spirits directly from his store to an Excise or Customs warehouse, and all spirits so removed shall be deemed to have been first warehoused in the distiller's warehouse and removed therefrom under the provisions of this Act.

58. (1.) The casks in which spirits are warehoused by a distiller may be either full or on ullage, but each cask must contain not less than nine gallons, and on the outside of each end thereof there must be legibly cut, branded, or

painted with oil colours the mark, number, capacity, and contents of the cask and the year in which it is warehoused. All the casks warehoused in a distiller's warehouse or from the same distillery in any one year must be continuously numbered, beginning with number one for the cask first warehoused in such year.

(2.) A distiller must, not less than twenty-four hours before removing spirits from his store to his distiller's warehouse or an Excise warehouse, give the officer in charge of the store, and also the officer in charge of the warehouse, written notice of the day and hour when he intends to begin the removal.

(3.) He must, by the same notice, or by a further written notice given to each of these officers not less than one hour before the removal, specify the mark, number, and capacity of each cask which he intends to warehouse, and the number of gallons and the strength of the spirits contained in each cask.

(4.) All spirits removed at the same time from the store to warehouse must be of the same strength, and within one per centum of the strength specified in the notice.

(5.) The removal of spirits must not take place except on the day specified in the notice, nor except between the hours of eight o'clock in the forenoon and three o'clock in the afternoon.

(6.) The officer in charge of the warehouse shall give to the distiller a certificate in the prescribed form in relation to the spirits warehoused, and the certificate shall forthwith be delivered over to the officer in charge of the distillery.

(7.) In the case of spirits warehoused in a Customs warehouse the authorized officer of Customs at the warehouse shall give to the distiller a receipt in the prescribed form for the spirits, and the receipt shall be forthwith delivered over to the officer in charge of the distillery, who shall give to the distiller a copy thereof signed by him.

(8.) The officer in charge of the distillery, after the delivery of any such certificate or receipt, shall deduct from the number of gallons of spirits for which the distiller is chargeable with duty the number of gallons of spirits warehoused computed at proof.

(9.) If a distiller or any other person produces a receipt, purporting to express that spirits have been warehoused in a Customs warehouse, which receipt is untrue in any particular, he shall incur a fine of two hundred pounds.

59. The proprietor of any plain spirits re-imported into the United Kingdom may, on the issue by the Commissioners of Customs of a bill of store for the spirits, and on the repayment of the allowance granted on the exportation thereof, warehouse the spirits in an Excise or Customs warehouse.

60. All casks warehoused must be arranged and stowed in such manner that access can be easily had to each cask.

If a distiller or the proprietor or occupier of a warehouse fails to cause the casks therein to be so arranged and stowed he shall incur a fine of five pounds.

61. (1.) The proprietor of spirits warehoused may, in the presence of the officer in charge of the warehouse, view and examine the spirits, and show them for sale, and examine the state of the casks, and prevent leakage and drainage therefrom.

(2.) The officer shall, on request, attend at all reasonable times for this purpose, but not more than once in twenty-four hours.

62. Spirits in a distiller's warehouse may, on the prescribed security being given by the distiller, be transferred to a purchaser, but no further transfer may be made of them whilst remaining in the same warehouse.

63. British spirits warehoused in an Excise warehouse in the name of a distiller or dealer may be transferred into the name of a purchaser on his producing to the officer in charge of the warehouse a written order for the delivery thereof, signed by the proprietor of the spirits, and countersigned by the proprietor or occupier of the warehouse or his servant acting for him at the warehouse. Spirits so transferred shall be discharged from all claim in respect of duties, penalties, or forfeitures to which the transferor is liable, but may not be delivered out of the warehouse for home consumption until payment of the duties chargeable thereon.

64. (1.) The proprietor of spirits warehoused in a distiller's or Excise warehouse may, in accordance with the prescribed regulations, vat, blend, or rack them in the warehouse, either on payment of duty or otherwise.

(2.) Every cask containing racked or blended spirits must be marked in the prescribed manner.

(3.) If the proprietor of any racked or blended spirits in a warehouse fails to have the casks containing the spirits marked as by this section required, and to keep them so marked, he shall incur a fine of fifty pounds.

65. (1.) The Commissioners may require a distiller or a proprietor or occupier of an Excise warehouse to provide a separate room, secured to their satisfaction, for racking spirits on which duty has been paid.

(2.) The officer in charge of the warehouse shall keep an account of all spirits computed at proof belonging to a proprietor of spirits which shall be received into the room and lawfully sent out therefrom.

(3.) If at any time a greater quantity of spirits is found in the room than ought, according to the account, to be there, the excess shall be charged with duty.

(4.) If the excess amounts to more than one per centum of the quantity of spirits brought in since the last preceding account, it shall be forfeited, and the proprietor of the spirits shall incur a fine of twenty shillings for every gallon of the excess.

66. (1.) In any warehouse the duty shall be paid on any deficiency exceeding the amount which can be accounted for by natural waste or other legitimate cause before racking, and also on any deficiency exceeding one per centum which occurs during the operation.

(2.) If, after duty has been paid on any spirits, a portion thereof is racked or drawn off from the cask, no further abatement or allowance for deficiency shall be made in respect thereof whilst they remain in warehouse.

67. (1.) A distiller may, in an Excise warehouse specially approved for the purpose, and in accordance with the prescribed regulations, reduce with water any plain spirits of a strength not less than forty-three per centum over proof to any strength at which spirits may be removed from a distiller's spirit store.

(2.) The water used for this purpose must be supplied only through a service pipe and meter constructed, laid down, and fixed to the satisfaction of the Commissioners.

(3.) An allowance not exceeding one per centum shall be made on any deficiency occurring during the reduction.

68. (1.) The proprietor of spirits warehoused in an Excise warehouse may bottle the spirits on giving the officer in charge of the warehouse twenty-four hours previous notice of his intention to do so.

(2.) He must provide and give the prescribed security, and the place in which the spirits are to be bottled must be approved by the Commissioners, must be adjacent to the warehouse, and must not be situate in the same court or yard, or have any communication with the premises of a rectifier, dealer, or retailer.

(3.) If the spirits are for home consumption they must be drawn off into imperial or reputed quart or pint bottles, and packed in cases containing one dozen quart bottles or two dozen pint bottles each, or any number of dozens.

(4.) Each case must be fastened, secured, and marked in the prescribed manner in the bottling place.

(5.) Subject as aforesaid, spirits must be bottled, packed, and removed in accordance with the prescribed regulations.

(6.) If at any time there is found in the quantity of spirits belonging to the proprietor a deficiency since the last account was taken exceeding by two per centum in the quantity removed by him into the bottling place, he shall be charged with duty on such deficiency.

(7.) Spirits so bottled may not be removed for home consumption :—

(a.) by a distiller, unless he is also licensed as a dealer in a quantity less than five dozen imperial or reputed quart bottles or ten dozen imperial or reputed pint bottles ;

(b.) by any person in a quantity less than one dozen imperial or reputed quart bottles, or two dozen imperial or reputed pint bottles.

69. A distiller or a rectifier may, in accordance with the prescribed regulations, and on giving to the proper officer, or the authorized officer of Customs, one day's notice, add any sweetening or colouring matter, or any other ingredient, to any spirits warehoused by him in an Excise or Customs warehouse.

70. Any spirits warehoused in an excise or Customs warehouse, except British compounds, may be used in the warehouse for fortifying wines, or for any other purpose for which foreign spirits may be used under the Acts relating to the customs.

71. Spirits may not be removed from a distiller's warehouse before six in the forenoon or after six in the afternoon, nor from an Excise warehouse before eight in the forenoon or after four in the afternoon.

72. Subject to the provisions of this Act, spirits warehoused may, in accordance with the prescribed regulations, and on the prescribed security being given, and at the risk of the proprietor thereof, be removed to any other warehouse except a distiller's warehouse.

73. Where spirits are to be warehoused in an Excise warehouse upon removal from another warehouse, the proprietor of the spirits may, on their arrival at, but before their actual deposit in, the warehouse, make an entry thereof, or of some portion thereof not being less than one cask, for removal for home consumption, or to another warehouse, or for exportation, or ship's stores, and thereupon the spirits of which entry is so made shall be considered as if they had been actually deposited, and may be delivered and removed accordingly.

74. Spirits to which any sweetening or colouring matter or any other ingredient has been

added in warehouse, British liqueurs or tinctures or medicinal spirits, may not be delivered from a warehouse except for exportation or ship's stores, and must, when so delivered, be removed directly from the warehouse to the ship in which they are to be exported or used as stores.

75. (1.) Spirits may be delivered from a warehouse for home consumption after the full duty chargeable thereon has been paid.

(2.) The officer at the warehouse shall, on production to him of the receipt for the duty, allow the spirits to be removed.

(3.) The spirits must be conveyed to the place of destination and delivered there, without alteration or change in the same casks or packages in which they left the warehouse.

76. On the delivery for home consumption from any warehouse of a cask or package of British spirits warehoused therein without payment of duty, duty shall be charged and paid on the quantity of spirits contained in the cask or package at the time of delivery. But if the quantity at that time is less than the quantity originally warehoused, then, unless the Commissioners or the Commissioners of Customs, as the case may be, are satisfied that no part of the deficiency is caused by fraudulent abstraction, duty shall be charged and paid on the quantity so warehoused, or on such portion thereof as such Commissioners direct.

77. (1.) If at any time any deficiency beyond that which can be accounted for by natural waste or other legitimate cause is found in any cask or package of British spirits warehoused, the Commissioners or the Commissioners of Customs may require immediate payment of duty on the quantity of spirits originally warehoused in the cask or package.

(2.) If the person in whose name the spirits are warehoused refuses, on written demand by an officer, or an officer of customs, to pay the duty, he shall forfeit double the amount thereof.

(3.) No spirits warehoused in his name shall be transferred or removed until the duty or forfeiture is paid.

78. The quantity of spirits contained in any vat, bottle, vessel, cask, or package warehoused may be calculated by weight, measure, or gauge, as the Commissioners or the Commissioners of Customs may direct.

79. Where British spirits are delivered from a Customs warehouse for home consumption, and in all cases where duty is payable on such spirits in such warehouse, the duty payable shall be collected according to the laws and regulations for like spirits in an Excise warehouse by the officers

of Customs under the direction of the Commissioners of Customs, and paid into the Bank of England to the account of the Receiver General of Inland Revenue, and dealt with as other duties of Excise.

80. Where foreign spirits are delivered from an Excise warehouse for home consumption, the duty payable thereon shall be collected by an officer under the direction of the Commissioners according to the laws and regulations for like spirits in a Customs warehouse, and paid into the Bank of England to the account of the Commissioners of Customs, and dealt with as other duties of Customs.

81. (1.) The proprietor of spirits in a distiller's or Excise warehouse may, on giving notice and the prescribed bond, remove the spirits for exportation without payment of duty.

(2.) The notice must be delivered to the officer in charge of the warehouse not less than twenty-four hours before the time when the proprietor intends to ship the spirits, and must specify the mark, number, and capacity of each cask or package intended to be shipped, the number of gallons and strength of the spirits contained in each such cask or package, the time and place of the intended shipment, and the name or description and destination of the ship.

(3.) The officer may place any prescribed mark on each cask or package intended for exportation.

(4.) The bond given by the proprietor must, subject to the prescribed regulations, be conditioned that the spirits specified in the notice given from time to time shall be conveyed to the quay where the ship is lying, shall be put on board the ship, and shall (the danger of the seas or enemies excepted) be exported to and landed at the port specified in the notice, without alteration or change, and shall not be landed at any other place.

(5.) The spirits must be sent to the quay where the ship is lying, and delivered with the permit to the custody of the authorized officer of Customs there, and must remain in his custody until shipped.

(6.) On shipment the officer of Customs shall certify on the back of the permit the date of the shipment, the name of the ship, and the quantity of spirits, computed at proof, shipped, and shall send the permit to the collector of the collection from which the spirits were sent.

82. Spirits warehoused may, on the prescribed bond being given, subject to the prescribed regulations and subject to the conditions, regulations, and restrictions required by any Act in force for the time being, be delivered out without payment of duty for ship's stores.

83. Spirits warehoused may, on the prescribed bond being given, subject to the prescribed regulations, be delivered out, without payment of duty, for methylation.

84. If a distiller, or proprietor of spirits, or proprietor or occupier of an Excise warehouse, by himself or by any person in his employ or with his connivance, commits any of the following offences; (that is to say,)

- (a.) Opens any of the locks or doors of a warehouse, or makes or obtains access into an Excise warehouse, except in the presence of an officer acting in his duty as such; or
- (b.) After the approval of a warehouse, makes any alteration therein or addition thereto without the previous consent of the Commissioners; or
- (c.) Warehouses spirits in, or removes spirits from, a warehouse otherwise than is provided by this Act; or
- (d.) By any contrivance or device privately removes or conceals any spirits either before or after they are warehoused, he shall incur a fine of two hundred pounds; and all spirits warehoused, removed, or concealed in contravention of this section shall be forfeited.

85. All the powers, provisions, regulations, and penalties contained in or imposed by any Act relating to the Customs as to the warehousing, custody, and delivery out of warehouse of goods liable to a duty of Customs, and as to any deficiencies therein or allowances thereon, shall, where applicable, be observed, applied, enforced, and put into execution with reference to British spirits warehoused in a Customs warehouse, so far as the same are not superseded by and are consistent with the provisions of this Act.

#### *Rectifiers.*

86. The rules contained in the fourth, sixth, seventh, eighth, ninth, and tenth parts of the First Schedule, with the corresponding penalties, and the provisions of this Act with reference to the following matters:—

- (a.) Alterations of vessels, utensils, and pipes;
  - (b.) Powers of Commissioners to allow use of additional or substituted utensils and fittings;
  - (c.) Penalty for interference with and attempt to defeat gauging;
  - (d.) Penalties for frauds and offences in relation to vessels and utensils;
  - (e.) Making entry;
  - (f.) Unlawful hours for distilling;
- shall apply to every rectifier as if he were a distiller.

Entry must be made by a rectifier before he begins to receive, rectify, or compound any spirits.

87. (1.) No person may make entry of or use for rectifying or compounding spirits, or for receiving or keeping spirits as a rectifier, any premises within a quarter of a mile of any premises entered or used for brewing or making wort or wash, or for distilling spirits, or for receiving or keeping spirits by a distiller.

(2.) If any person contravenes this section he shall incur a fine of five hundred pounds for every week during which the premises are so entered or used.

88. (1.) A rectifier keeping a still may not carry on upon his premises the business of a brewer of beer or a maker of sweets, vinegar, cider, or perry, or a refiner of sugar, or a dealer in or retailer of wine.

(2.) No person may carry on the business of a rectifier keeping a still upon premises communicating otherwise than by an open public street or carriage road with any premises used by a brewer of beer or a maker of sweets, vinegar, cider, or perry, or a refiner of sugar, or a dealer in or retailer of spirits or a dealer in or retailer of wine.

(3.) If any person contravenes any of the foregoing provisions of this section he shall incur a fine of two hundred pounds.

(4.) The Commissioners may refuse to grant a licence for rectifying or compounding spirits on any premises in which from their situation with respect to a distillery they think it inexpedient to allow such business to be carried on.

89. (1.) A rectifier keeping a still must not have in his possession any wort, wash, fermented liquor, or materials capable of being distilled into low wines or spirits.

(2.) No rectifier whatever may—

(a.) Distil or extract low wines or spirits from any material except spirits; or

(b.) Have in his possession any spirits for which he has not received and delivered to the proper officer a permit or certificate; or

(c.) Have in his possession any foreign spirits, except for the purpose of being rectified or compounded by him as spirits of wine or as British compounds.

(3.) If a rectifier contravenes this section, he shall for each offence, in addition to any other penalty, incur a fine of five hundred pounds, or, at the election of the Commissioners, of twenty shillings for every gallon of wort, wash, fermented liquor, or other materials or of the low wines or spirits in respect of which the offence is committed.

(4.) If a rectifier is convicted more than once of an offence against this section, his licence shall become void, and he shall, during three years from the date of the conviction, be incapable of holding a licence as a rectifier.

90. (1.) A rectifier must, on receipt of any spirits, give notice thereof to the proper officer, and deliver to him the permit or certificate received with the spirits.

(2.) Unless the officer neglects to attend within one hour after receiving the notice, the rectifier must not, until the officer has taken account of the spirits so received, break bulk or draw off any part of the spirits or add water or anything thereto, or in any respect alter the same, or tap, open, alter, or change any cask or package containing any such spirits.

(3.) If a rectifier contravenes this section he shall incur a fine of two hundred pounds and forfeit the spirits in respect of which the offence is committed.

91. (1.) With respect to the business of a rectifier the rules in the Third Schedule must be observed.

(2.) For any contravention of the rules in the first part of the Third Schedule the rectifier shall incur a fine of two hundred pounds.

(3.) For any contravention of the rules in the second part of the Third Schedule the rectifier shall incur a fine of one hundred pounds.

(4.) For any contravention of the rule in the fourth part of the Third Schedule the rectifier shall incur a fine of fifty pounds, and the spirits in respect of which the offence is committed shall be forfeited.

92. An officer may take a sample of the contents of a still of a rectifier at any time before it has begun to work, or after it has ceased working, and if there is found in the still any wine or wash put into or mixed with low wines, feints, or spirits, the rectifier shall, in addition to any other penalty, incur a fine of five hundred pounds.

93. (1.) A rectifier must not send out any spirits except British compounds or spirits of wine, and must not send out any British compounds or spirits of wine in less quantity than two gallons.

(2.) If a rectifier contravenes this section, he shall, for each offence, incur a fine of fifty pounds; and all spirits sent out in contravention of this section, together with all horses, cattle, carriages, and boats made use of in conveying the same, shall be forfeited.

94. (1.) An officer shall from time to time take an account in the prescribed manner of the

quantity and strength of the spirits in the stock of a rectifier, making allowance for the spirits for which certificates have been granted since the last account.

(2.) If a still is at work when the account is taken, all spirits produced from the charge of the still must be kept apart from the remainder of the stock until the account has been completed.

(3.) If, on balancing the stock, any excess appears, a quantity of spirits, computed at proof, equal thereto shall be forfeited, and the rectifier shall incur a fine of twenty shillings for every gallon of such excess.

(4.) If, on balancing the stock, there is any deficiency not duly accounted for by spirits sent out with certificate, and exceeding five per centum on the balance struck when the account was last taken, together with the quantity since lawfully received, the rectifier shall incur a fine of twenty shillings for every gallon of such deficiency.

95. (1.) A rectifier may, subject to the provisions of this Act, and the prescribed regulations, warehouse in an Excise or Customs warehouse, for exportation or for ship's stores, or for home consumption, British compounds rectified or compounded by him from spirits on which duty has been paid, and not being British liqueurs or tinctures or medicinal spirits.

(2.) He may so warehouse for exportation or for ship's stores, but not for home consumption, British liqueurs, tinctures, or medicinal spirits compounded by him from spirits on which duty has been paid.

(3.) He may so warehouse, either for exportation or for ship's stores, but not for home consumption, spirits of wine rectified by him from spirits on which duty has been paid.

(4.) British compounds warehoused for home consumption must be of a strength not exceeding eleven degrees over proof.

(5.) British compounds and spirits of wine must be warehoused in casks either full or on ullage of one gallon or two gallons. All casks warehoused in any one year from the same premises must be numbered consecutively. The capacity of each cask must be not less than nine gallons, and there must be legibly cut, branded, or painted with oil colours on each end thereof—

- (a.) The name and place of business of the rectifier:
- (b.) The number of the cask and the year in which it is warehoused:
- (c.) The capacity of the cask in gallons, and, if the capacity is less than eighty gallons, the quarter or quarters of a gallon of capacity above the number of entire gallons:

(d.) The number of gallons, strength, and denomination of the spirits contained in the cask.

(6.) The rectifier must, before warehousing spirits, deliver to the officer in charge of the warehouse or the authorized officer of Customs, a warehousing entry specifying—

(a.) The particulars of the spirits, as set forth in the certificate:

(b.) The name of the rectifier:

(c.) The place whence the spirits are sent:

(d.) In the case of British liqueurs, or tinctures, or medicinal spirits, the number of gallons at proof of the spirits from which the contents of each cask were compounded.

(7.) The strength of all spirits warehoused on drawback (except British liqueurs, or tinctures, or medicinal spirits,) shall be deemed to be that ascertained by Sykes's hydrometer.

(8.) Where a cask contains British liqueurs or tinctures, or medicinal spirits, the officer shall take a sample from the cask; and the sample shall be examined, under the direction of the Commissioners, or the Commissioners of Customs, by distillation or otherwise, and the strength as ascertained by the examination, less five degrees, shall, for the purposes of this Act, be deemed the true strength of the contents.

(9.) When the officer has examined the spirits, he shall deliver to the rectifier a receipt specifying—

(a.) The marks, numbers, and capacity of each cask warehoused; and

(b.) The number of gallons computed at proof, description, and strength of the spirits in each cask; and

(c.) The total number of gallons computed at proof received with the certificate.

(10.) The officer shall forthwith send to the collector of the collection in which the rectifier's premises are situate a certificate setting forth the name of the rectifier, the situation of his premises, and the other particulars required to be inserted in the receipt.

(11.) The collector shall, on receiving three days written notice of the time when payment is required, and on production of the receipt, pay to the rectifier, or to any person authorized by him, a drawback of the duties on the spirits warehoused.

(12.) Spirits warehoused for home consumption under this section may be delivered out for home consumption under the same rules and regulations, and on payment of the same duty as spirits warehoused by a distiller.

(13.) Spirits warehoused for exportation or ship's stores under this section must not be delivered out otherwise than directly from the warehouse to the ship in which they are to be exported or used as stores.

*Dealers and Retailers.*

96. The first, second, and sixth rules contained in the seventh part of the First Schedule and the rules contained in the eighth part thereof, with the corresponding penalties, and the provisions of this Act with respect to the following matters—

(a.) Penalty for interference with or attempt to defeat gauging, and

(b.) Penalties for frauds and offences in relation to vessels and utensils,

shall apply to every dealer and retailer as if he were a distiller.

97. Every dealer and retailer must, in accordance with the prescribed regulations, make entry in writing, signed by him, of every building, room, place, fixed cask, vessel, and utensil intended to be used by him for keeping spirits, distinguishing each place or thing by a separate letter or number.

98. (1.) There must be legibly cut, branded, or painted with oil colour on some conspicuous part of every fixed cask or other vessel used by a dealer or retailer for holding spirits in stock, and on the outside of both the ends of every moveable cask used by him for keeping or delivering spirits, the number of gallons which the cask or vessel is capable of containing.

(2.) Every cask or vessel which does not bear the capacity thereof so cut, branded, or painted shall be forfeited with the contents, and the dealer or retailer shall incur a fine of fifty pounds.

99. (1.) Where the strength of any spirits forming part of the stock of a dealer or retailer cannot be ascertained by Sykes's hydrometer, the dealer or retailer must, on being so required by an officer, cause the quantity and strength of the spirits to be legibly marked on the outside of the cask or vessel containing them.

(2.) Every cask or vessel which a dealer or retailer neglects or refuses, on being so required to mark, or fails to keep so marked or which is found to be untruly marked, shall be forfeited with the contents, and the dealer or retailer shall, for each offence, incur a fine of fifty pounds.

(3.) But a cask or vessel shall not be deemed to be untruly marked within the meaning of this section if the strength denoted by the mark corresponds with that expressed in the permit or certificate with which the spirits were received into stock, and no alteration has since been made in the spirits.

100. (1.) A distiller shall not be licensed to carry on the business of a dealer upon any premises within two miles from his distillery unless

those premises are first approved by the Commissioners.

(2.) If a distiller carries on the business of a dealer on any approved premises within two miles from his distillery, no spirits shall be removed from such premises unless accompanied by a permit and if any spirits are removed without a permit he shall incur the same fine and forfeiture as if the removal had been from his spirit store.

101. (1.) A dealer or retailer must not carry on his business upon any premises communicating otherwise than by an open public street or carriage road with any premises entered or used by a distiller, or a rectifier keeping a still.

(2.) A retailer must not be concerned or interested in the business of a distiller, or of a rectifier keeping a still, carried on upon any premises within two miles from the premises on which he is licensed to carry on the business of a retailer.

(3.) If a dealer or retailer contravenes this section he shall for each offence incur a fine of two hundred pounds.

102. (1.) A dealer must not, unless he has an additional licence authorizing him so to do, or is also licensed as a retailer, sell, send out, or deliver spirits in any less quantity than two gallons of the same denomination at a time for the same person.

(2.) A retailer must not, unless he is also licensed as a dealer, sell, send out, or deliver spirits to a rectifier, dealer, or retailer, or buy or receive spirits from another retailer, not being also licensed as a dealer.

(3.) A dealer or retailer must not receive, send out, or have in his possession, any British spirits of any strength exceeding that at which a distiller may send out spirits of the like denomination.

(4.) If a dealer or retailer contravenes this section he shall for each offence incur a fine of fifty pounds, and in case of the spirits being of unlawful strength they shall be forfeited.

103. (1.) An officer may at any time take an account of the quantity of spirits in the stock or possession of a dealer or retailer.

(2.) If the quantity of spirits computed at proof found on taking the account exceeds the quantity which ought according to the stock book of the dealer or retailer to be in his possession, the excess shall be forfeited and the dealer or retailer shall incur a fine of twenty shillings for every gallon of the excess.

104. The sale of spirits in any quantity less than two gallons or less than one dozen reputed quart bottles shall be deemed sale by retail.

*Permits, Certificates, and Stock Books.*

105. (1.) No spirits may be sent out or delivered from a distiller's store unless accompanied by a permit.

(2.) No spirits may be removed from a distiller's or Excise warehouse unless accompanied by a permit.

(3.) No spirits may be removed from a Customs warehouse (the same not being under bond on removal from one such warehouse to another such warehouse) unless accompanied by a Customs certificate from an authorized officer of Customs.

(4.) No spirits may be sent out or delivered from the stock of a rectifier unless accompanied by a certificate.

(5.) No spirits may be sent out or delivered from the stock of a dealer unless accompanied by a certificate, except spirits not exceeding in quantity one gallon at a time sold by him under an additional licence or a licence to retail to a person not being a dealer or retailer.

(6.) No spirits exceeding in quantity one gallon of the same denomination at a time for the same person may be sent out or delivered from the stock of a retailer unless accompanied by a certificate.

(7.) Except as in this section is provided no spirits exceeding the quantity of one gallon of the same denomination at a time for the same person may be sent out, delivered, or removed from any one place to any other place unless accompanied by a permit.

(8.) All spirits found to have been sent out, delivered, or removed, or in course of being sent out, delivered, or removed in contravention of this section, together with all horses, cattle, carriages, and boats made use of in conveying the same, shall be forfeited, and every person in whose possession the same are found shall incur a fine of one hundred pounds, or at the election of the Commissioners or the Commissioners of Customs a fine equal to treble the value of the spirits.

(9.) If any question arises as to the accuracy of the description of spirits in a permit or certificate the proof that the spirits correspond to the description shall lie on the owner or claimant of the spirits, who shall prove the same by the oaths of two credible witnesses, being skilful and experienced persons competent to decide by examination thereof.

106. (1.) A permit shall be granted by the proper officer upon a request note signed by a distiller or other person requiring a permit and delivered to the officer.

(2.) The request note must contain the particulars specified in that behalf in the Fourth Schedule.

(3.) The permit must contain all the particulars specified in the request note, and shall be in force for such limited time only as may be mentioned in the permit.

(4.) A permit shall not be granted to a distiller for any less quantity of spirits than nine gallons contained in one cask, or if the spirits are bottled, for any quantity less than five dozen imperial or reputed quart bottles or ten dozen imperial or reputed pint bottles.

(5.) A permit shall not be granted for the removal of spirits from the stock of a distiller (except for spirits to be warehoused) unless the receipt for the duty on the spirits to be removed be produced with the request note.

(6.) The officer must endorse on the receipt the quantity of spirits for which the permit is granted and the date of the permit.

107. (1.) If any person—

(a.) sends out, delivers, removes, or receives any spirits required to be accompanied by a permit without a permit; or

(b.) sends out, delivers, removes, or receives any spirits in quantity greater than, or differing in quality, denomination, or strength from that expressed in the permit accompanying the same; or

(c.) having obtained a permit, does not send out therewith the spirits therein described or return the permit to the proper officer within the time by law required; or

(d.) requests, obtains, or uses any permit, or causes or suffers any permit to be requested, obtained, or used for any purpose other than that of accompanying the removal and delivery of spirits therein described; or

(e.) produces, or causes or suffers to be produced to any person any permit as having been received with spirits other than those therein described; or

(f.) in any manner uses, or causes or suffers to be used, any permit so that any account of spirits kept or checked by an officer may be frustrated or evaded;

he shall, in addition to any other penalty or forfeiture, incur a fine of five hundred pounds.

(2.) Every permit used for any purpose other than that of accompanying the removal and delivery of the spirits for which it is granted and as therein expressed, shall be deemed to be a false permit, and any unlawful use thereof shall, in addition to any other penalty or forfeiture, subject the person using it to all penalties and forfeitures imposed by law upon any person for using a false permit.

(3.) If a distiller, rectifier, dealer, or retailer is convicted of an offence against this section he shall forfeit his licence, and no new licence shall be granted to him for the remainder of the year for which such forfeited licence would have been in force.

108. (1.) Every rectifier, dealer, and retailer must by written request, obtain from the proper officer a certificate book containing forms of certificates and counterfoils for which he must give a receipt.

(2.) Before sending out or delivering any spirits required to be accompanied by a certificate, he must enter in one of these certificates, and in its counterfoil, the particulars specified in that behalf in the Fourth Schedule, and must sign the certificate.

(3.) He must deliver the certificate with the spirits to the person to whom the spirits are entered in the certificate.

(4.) He must use the certificates in the order in which they are numbered in the certificate book.

(5.) He must keep the certificate book in his premises, open to inspection by any officer, and must allow any officer to make entry therein, or take any extract therefrom.

(6.) He must return the certificate book when it is exhausted, or on request, to the proper officer, who shall give a receipt for it.

109. (1.) If a rectifier, dealer, or retailer sends out, delivers, or receives any spirits required to be accompanied by a certificate without a certificate or accompanied by an inaccurate certificate, he shall for each offence incur a fine of one hundred pounds, and all spirits sent out, delivered, or received in contravention of this section shall be forfeited.

(2.) A penalty shall not be incurred under this section by reason only of the spirits being in strength not more than one per centum above or two per centum below the strength expressed in the certificate.

110. (1.) If a rectifier, dealer, or retailer uses or suffers to be used any certificate taken from his certificate book, except for the removal of spirits from his own stock, or delivers or parts with any form of certificate without filling it up, as required by this Act, he shall for each offence incur a fine of five hundred pounds.

(2.) If any person uses a certificate or form of certificate, whether filled up or not, so that the account of spirits kept or checked by an officer, or any examination of spirits by an officer, is or may be frustrated or evaded, he shall for each offence incur a fine of five hundred pounds.

(3.) If a rectifier, dealer, or retailer is convicted of an offence under this section, he shall forfeit his licence and no new licence shall be granted to

him for the remainder of the year for which such forfeited licence would have been in force.

111. (1.) Every rectifier, dealer, and retailer must on receiving spirits accompanied by a permit or certificate, immediately cancel the permit or certificate in the prescribed manner, and must deliver the cancelled permit or certificate to the officer who first inspects his premises after the receipt thereof.

(2.) If any person contravenes this section he shall incur a fine of fifty pounds.

(3.) But no penalty shall be incurred for the failure to deliver a permit or certificate if it is proved that the failure is caused by the permit or certificate having been lost or destroyed more than three months after the date thereof.

112. (1.) Every rectifier, dealer, and retailer must provide himself with and keep a stock book according to a pattern to be obtained on application to the proper officer, and must, on receiving any spirits, and also on sending out or delivering any spirits required to be accompanied by a certificate, enter in his stock book the particulars specified in that behalf in the Fourth Schedule.

(2.) He must make these entries at such times as an officer directs, or in the absence of any such direction before the expiration of the day on which the spirits are received, sent out, or delivered.

(3.) He must keep the stock book in his premises, open to inspection by any officer, and must allow any officer to make any entry therein or take any extract therefrom.

(4.) He must keep it open to such inspection for not less than twelve months after it is filled up.

113. If a rectifier, dealer, or retailer—

(a.) fails to obtain, provide, keep, produce, or return a certificate book or a stock book as by this Act required, or to make therein respectively the entries by this Act required; or

(b.) hinders or obstructs any officer in examining a certificate book or a stock book, or in making any entry therein or extract therefrom; or

(c.) cancels, alters, obliterates, or destroys any part of a certificate book or a stock book or any entry therein; or

(d.) makes a false entry in a certificate book or a stock book; or

(e.) separates any certificate, or form of certificate, from its counterfoil without properly filling up the certificate and counterfoil, or except on the occasion of sending out or delivering spirits therewith;

he shall for each offence incur a fine of one hundred pounds.

*Miscellaneous.*

114. For the purpose of ascertaining by weighing the quantity of spirits in a cask, table B. in the Second Schedule shall be used, and the quantity ascertained thereby in accordance with the rates prefixed thereto shall be deemed to be the true quantity.

115. In the event of the loss or destruction by fire or other unavoidable accident of any wash or spirits in a distillery, or of any spirits when deposited in a distiller's or Excise warehouse or whilst being received into or delivered from a spirit store or such warehouse, or whilst being removed under bond on shipboard, or whilst being shipped or landed, the Commissioners shall, on proof to their satisfaction of the loss or destruction, remit the duty payable or paid in respect of the wash or spirits so lost or destroyed.

## PART II.

## METHYLATED SPIRITS.

116. Part I. of this Act shall not apply to methylated spirits.

117. (1.) Methylated spirits shall, subject to the provisions of this Act, be exempt from duty.

(2.) If a rectifier methylates duty-paid spirits he shall be allowed a drawback at the rate of the duty chargeable on British spirits of the like strength.

118. (1.) The following persons, and no others, are authorized to methylate:

- (a.) Distillers, if so authorized by the Commissioners.
- (b.) Rectifiers, if so authorized by the Commissioners.
- (c.) Persons licensed to methylate.

(2.) Such persons are called in this Act authorized methylators.

119. The following persons, and no others, are authorized to supply methylated spirits:

- (a.) Authorized methylators.
- (b.) Persons licensed to retail methylated spirits, in this Act called retailers of methylated spirits.

120. The Commissioners may, if they think fit, authorize any person to receive methylated spirits from an authorized methylator for use in any art or manufacture carried on by him. The authority shall not be granted until the applicant has given the prescribed security that he will use the methylated spirit in the art or manufacture and for no other purpose, and that he will observe

the provisions of this Act and the prescribed regulations.

121. An authorized methylator must not supply methylated spirits to any person except—

- (a) a retailer of methylated spirits, or
- (b) a person authorized to receive methylated spirits, or
- (c) if the methylator is a distiller, a rectifier authorized to methylate, or a person licensed to methylate.

122. (1.) Spirits may be methylated in the following places—

- (a.) A building or room approved by the Commissioners and entered for the purpose by the methylator.
- (b.) A warehouse provided for the purpose by the Commissioners.
- (c.) An Excise warehouse with the permission of the Commissioners.

(2.) The Commissioners may charge for warehousing and labour at the rate of one penny per gallon per month for all spirits methylated or stored in a warehouse provided by them.

123. (1.) The following and no other spirits may be used for methylation:

- (a.) Plain spirits of strength not less than fifty per centum above proof, and unsweetened foreign spirits of like strength.

- (b.) Rum of strength not less twenty per centum above proof.

(2.) The quantity of spirits used for methylation at any one time shall not be less than—

- (a.) In the case of British spirits, four hundred and fifty gallons;
- (b.) In the case of foreign spirits in an Excise warehouse, the contents of the cask in which the spirits are imported.

(3.) The substance mixed with spirits for the purpose of methylation must be wood naphtha, or methylic alcohol in the proportion of not less than one ninth of the bulk of the spirits, or some other substance approved for the purpose by the Commissioners; and may, if the Commissioners think fit, be provided by them at the expense of the methylator.

(4.) The substance must, before the mixing thereof, be examined and approved by an officer appointed in that behalf.

(5.) Foreign spirits may not be used for methylation until the difference between the duty of customs chargeable thereon and the duty of excise chargeable on British spirits has been paid.

(6.) With respect to the removal of spirits and substances for methylation and the time and mode of methylation the prescribed regulations must be observed, and the prescribed security must be given.

124. (1.) An authorized methylator must not supply methylated spirits except in vessels containing not less than five gallons.

(2.) Each vessel must be distinctly labelled with the words "methylated spirits" and must be accompanied by a permit or such document in the nature of a permit as the commissioners may prescribe.

(3.) The sale, delivery, and removal of methylated spirits from the premises of an authorized methylator must be in accordance with the prescribed regulations, and subject to the prescribed security.

(4.) Every person authorized to receive methylated spirits must, on ordering the same, correctly fill up the prescribed form of requisition and counterfoil with the prescribed particulars, and send with the requisition a certificate signed by the proper officer that the applicant is a person so authorized, and must keep the counterfoil and produce it on request to any officer.

125. (1.) The proper officer shall keep a stock account of all spirits computed at proof methylated or received by an authorized methylator.

(2.) If the quantity of methylated spirits in the possession of an authorized methylator exceeds by more than one per centum the quantity which ought by the stock account to be in his possession he shall forfeit the whole excess.

(3.) If the quantity of methylated spirits in the possession of an authorized methylator is less by more than two per centum than the quantity which ought by the stock account to be in his possession, he shall pay on the whole deficiency the duty payable on British spirits.

126. (1.) A retailer of methylated spirits—

(a.) must make entry with the Commissioners of each room or place where he intends to keep and sell the spirits; and

(b.) must not keep or sell the spirits in any place which is not so entered; and

(c.) must not receive or have in his possession at any one time a greater quantity of methylated spirits than fifty gallons; and—

(d.) must not receive methylated spirits except from an authorized methylator or a retailer of methylated spirits; and

(e.) must not receive methylated spirits from a retailer of methylated spirits in a quantity exceeding one gallon at a time; and

(f.) must not sell to or for the use of any one person more than one gallon of methylated spirits at a time; and

(g.) must, on request, at all reasonable times produce his stock of methylated spirits for examination by an officer; and

(h.) must keep an account, in the prescribed form, of his stock of methylated spirits and of the sale thereof.

If a retailer of methylated spirits contravenes this section he shall for each offence incur a fine of fifty pounds and the spirits with respect to which the offence is committed shall be forfeited.

127. (1.) An officer may in the daytime enter and inspect the premises of an authorized methylator or a retailer of methylated spirits, or any premises of a person authorized to receive methylated spirits, and inspect, examine, and take samples of any methylated spirits therein, paying a reasonable price for each sample.

(2.) If any person refuses to allow an officer to exercise any of these powers, he shall for each offence incur a fine of fifty pounds.

128. (1.) If any person supplies, removes, or receives methylated spirits in contravention of this Act he shall for each offence incur a fine of fifty pounds, and the spirits with respect to which the offence is committed shall be forfeited.

(2.) If an authorized methylator supplies any methylated spirits to any person after having received notice from the proper officer that the person to whom the spirits are supplied is not authorized to receive them, he shall pay on the spirits so supplied the duty payable on British spirits.

129. If any person—

(a.) being an authorized methylator, has in his possession any methylated spirits in any place where he is not authorized to keep them; or

(b.) not being an authorized methylator, has in his possession any methylated spirits not obtained from a person authorized to supply them, he shall incur a fine of one hundred pounds, and the spirits with respect to which the offence is committed shall be forfeited.

130. (1.) If any person—

(a.) prepares or attempts to prepare any methylated spirits for use as or for a beverage or as a mixture with a beverage; or

(b.) sells any methylated spirits, whether so prepared or not, as or for a beverage, or mixed with a beverage; or

(c.) uses any methylated spirits or any derivative thereof in the preparation of any article capable of being used wholly or partially as a beverage, or internally as a medicine; or

(d.) sells or has in his possession any such article in the preparation of which methylated spirits or any derivative thereof has been used,

he shall for each offence incur a fine of one hundred pounds, and the spirits with respect to which the offence is committed shall be forfeited.

(2.) Nothing in this section shall apply to the use of methylated spirits, or any derivative thereof, in the preparation of sulphuric ether or chloroform, for use as a medicine, or in any art or manufacture, or prevent the sale or possession of any sulphuric ether or chloroform for such use.

131. Where methylated spirits have been mixed with gum resin for forming any article, if any person separates the gum resin from the spirits, or alters the article in any way except by adding gum resin, or by adding a substance for the sole purpose of colouring, he shall for each offence incur a fine of two hundred pounds, and forfeit the spirits and article with respect to which the offence is committed.

132. The Commissioners may suspend or revoke any licence to methylate, authority, or approval granted under this part of this Act.

### PART III.

#### SUPPLEMENTAL.

##### *Purified Methylic Alcohol.*

133. (1.) Any liquid containing methylic alcohol so purified or otherwise prepared by filtration or any other process as to be free wholly or partially from any flavour or odour which would otherwise pertain to it shall be deemed to be low wines, and to have been so prepared for the purpose of distilling spirits therefrom, and shall be chargeable with duty and otherwise subject to the regulations to which spirits are subject under Part I. of this Act.

(2.) Provided that the Commissioners may, if they think fit, dispense with or modify those regulations with respect to any such preparation.

##### *Sykes's Hydrometer.*

134. All spirits shall be deemed to be of the strength denoted by Sykes's hydrometer as ascertained by any officer or any officer of Customs in accordance with the table lodged with the Commissioners, and entitled a table of the strength of spirits denoted by Sykes's hydrometer.

##### *Scales, Weights, Measures, Locks, and Fastenings.*

135. (1.) Every excise trader must provide sufficient and just scales and weights, and a set of standard measures for the purpose of weighing, measuring, and taking an account of the

spirits, goods, and commodities in his warehouse, stock, or possession, and of any casks or vessels used for the purpose of containing any such spirits, goods, or commodities.

(2.) The weights and measures must be of the prescribed denominations.

(3.) The Excise trader must maintain and keep the scales, weights, and measures in such proper and convenient place in his distillery, warehouse, or other premises as the proper officer approves, and so that the same shall be at all times ready for the use of officers.

(4.) The Excise trader must permit any officer to use the scales, weights, and measures for the purpose aforesaid, and must, with his servants and workmen, whenever required by any officer, weigh or measure, and assist him in weighing or measuring, as he requires, and in taking account of any such spirits, goods, or commodities as aforesaid.

(5.) For any refusal or neglect on the part of an Excise trader to comply with any of the foregoing provisions of this section he shall incur a fine of one hundred pounds.

(6.) If any Excise trader provides or uses or permits to be used any false, unjust, or insufficient scales or weight or measure, or practises any device or contrivance by which any officer may be prevented from, or hindered or deceived in taking the just and true quantity, weight, or measure of any spirits, goods, or commodities, or of any casks or vessels, he shall incur a fine of two hundred pounds, and any such scales, weights, and measures shall be forfeited.

136. (1.) Where any warehouse, room, place, vessel, utensil, or fitting belonging to any Excise trader is by this Act directed to be secured or locked, the Excise trader must to the satisfaction of the proper officer, provide, affix, repair, and renew all fastenings requisite for the purpose of enabling officers to affix locks thereto, or otherwise to secure the same.

(2.) If the Excise trader fails so to do the proper officer may provide, affix, repair, or renew the fastenings, and the expense thereof shall be paid on demand by the Excise trader.

(3.) If the Excise trader fails on demand to pay the expense he shall incur a fine of one hundred pounds.

(4.) All requisite locks or keys shall be provided by the Commissioners, at the expense of the revenue.

(5.) If any Excise trader, or his servant or workman, wilfully destroys or damages any such fastening, or any lock or key belonging thereto, or any lock label, or opens or removes any lock, fastening, or lock label, or improperly obtains access into any warehouse, room, place, vessel, utensil, or fitting, or has any fastening, vessel, utensil, or fitting so constructed that the security

intended to be obtained by any lock or fastening may be defeated, the Excise trader shall incur a fine of five hundred pounds.

*Powers of Officers.*

137. (1.) An officer may, at any time, either by day or by night, enter any part of the premises of, or house or place whatsoever belonging to or made use of by, a distiller or rectifier, and search for, examine, gauge, and take an account of any still or other vessel or utensil therein, and also any spirits or materials for the manufacture of spirits therein.

(2.) If an officer, after having demanded admission into the premises of a distiller or rectifier and declared his name and business at any entrance or window thereof, is not immediately admitted, the officer, and any person acting in his aid, may at any time, either by day or by night (but at night only in presence of an officer of the peace), break open any door or window of the premises, or break through any wall thereof, for the purpose of obtaining admission, and the distiller or rectifier shall incur a fine of two hundred pounds.

138. Every distiller or rectifier must, on demand by an officer, made on the premises, either by day or by night, and for the purpose of enabling him to search for, examine, gauge, or take an account of any vessel, utensil, spirits, or materials therein, provide ladders of sufficient length and strength, and place them firmly and conveniently, and supply sufficient lights and aid.

If a distiller or rectifier contravenes this section he shall for each offence incur a fine of one hundred pounds.

139. Any officer, or person acting in his aid, may, either by day or by night, for the purpose of searching for any pipe, cock, conveyance, or utensil, break up the ground in or adjoining or near the premises of a distiller or rectifier, or any wall or partition of his premises or any other place, and may, on finding any pipe or conveyance leading to or from the premises, break up or break any ground, house, wall, or other place through or into which the pipe or conveyance leads, and may break up or cut away any such pipe or conveyance, and turn any such cock, and examine whether any such pipe or conveyance conveys or conceals any spirits or any liquor used in the manufacture of spirits, so as to prevent a true account thereof from being taken.

If any damage is done in the search and such search is unsuccessful the damage shall be made good.

140. (1.) If any officer or any officer of Customs makes oath that there is good cause to suspect

that any still, vessel, utensil, spirits or materials for the manufacture of spirits is or are unlawfully kept or deposited in any house or place, and states the grounds of suspicion, any justice may, if he thinks fit, issue a warrant authorizing the officer and any person whom he calls to his assistance to search the house or place; and a like warrant may be issued by any two of the Commissioners in case the house or place is situate within the limits of the chief office of Inland Revenue.

(2.) Any person so authorized may, either by day or by night, but at night only in the presence of an officer of the peace, break open and forcibly enter any such house or place, and seize any still, vessel, utensil, spirits, or materials for the manufacture of spirits found therein, and either detain the same or remove them to a place of safe custody.

(3.) Every still, vessel, or utensil, and all spirits and materials so seized shall be absolutely forfeited, and the owner of any such still, vessel, or utensil, or the person in whose custody the same is found, shall for every place in which the same is found, and also for every such still, vessel, or utensil incur a fine of two hundred pounds.

(4.) If any damage is done by such forcible entry, and the search is unsuccessful, the damage shall be made good.

(5.) An officer may seize any such still, vessel, utensil, spirits, or materials without a warrant.

141. An officer may at any time enter the premises of a dealer or retailer and inspect and examine the spirits in his stock or possession, and take samples of any such spirits, paying for any sample so taken the usual price thereof.

142. Every distiller, rectifier, dealer, and retailer must, when required by an officer, assist him by a sufficient number of servants in taking account of his stock, and shall for any neglect or refusal so to assist incur a fine of fifty pounds.

143. (1.) An officer may require a distiller at any time when his still is not at work, to cause the water in any worm tub in his distillery to be drawn off, and the tub and worm to be cleaned.

(2.) In such case the water must be kept out of the worm tub for two hours, or until the officer has finished his examination of it, whichever first happens.

(3.) If a distiller fails to comply with any requirement under this section he shall incur a fine of two hundred pounds, and the officer may draw off the water or any portion of it, and keep it drawn off as long as he thinks necessary.

*General Offences.*

144. (1.) If any person removes any wort, wash, low wines, feints, or spirits from the premises of a

distiller, contrary to the provisions of this Act, or knowingly buys or receives any wort, wash, low wines, feints, or spirits so removed from the premises of a distiller, he shall incur a fine of one hundred pounds.

(2.) In default of payment of the fine on summary conviction the offender shall be imprisoned with or without hard labour. The term of imprisonment in Scotland or Ireland shall be not less than two months nor more than six months.

(3.) All such wort, wash, low wines, feints, or spirits so removed shall be forfeited.

(4.) Any officer may arrest any person found committing an offence against this section.

145. (1.) Any officer or any officer of Customs, and any officer of the peace having a commission from the Commissioners, may stop and detain any person found carrying or removing any spirits, and may examine the spirits and require the production of a permit or certificate authorizing the removal thereof.

(2.) If a permit or certificate is produced agreeing with the spirits in all respects the officer may endorse thereon the time and place of his examination thereof.

(3.) If any person is found carrying or removing any spirits exceeding the quantity of one gallon of the same denomination for the same person and does not, on request by any such officer, forthwith produce a permit or certificate authorizing the removal of the spirits, he shall incur a fine of one hundred pounds, and the spirits shall be forfeited.

(4.) The sum to which the fine may be mitigated in Scotland or Ireland shall not be less than ten pounds.

(5.) In default of payment of the fine on summary conviction the offender shall be imprisoned with or without hard labour. The term of imprisonment in Scotland or Ireland shall be not less than one month nor more than six months.

(6.) Any officer may arrest any person found committing an offence against this section.

146. (1.) If any person hawks, sells, or exposes to sale any spirits otherwise than in premises for which he is licensed to sell spirits he shall incur a fine of one hundred pounds, and the spirits shall be forfeited.

(2.) The sum to which the fine may be mitigated in Scotland shall not be less than twenty-five pounds, or, in Ireland, shall not be less than six pounds.

(3.) In default of payment of the fine on summary conviction the offender shall be imprisoned with or without hard labour. The term of imprisonment in Scotland or Ireland shall be not less than two months nor more than three months.

(4.) Any person may arrest a person found committing an offence against this section.

147. If any person knowingly sells or delivers, or causes to be sold or delivered, any spirits to the end that they may be unlawfully retailed or consumed or carried into consumption, he shall, in addition to any other penalty, incur a fine of one hundred pounds.

148. If any person receives, buys, or procures any spirits from a person not having authority to sell or deliver the same, he shall incur a fine of one hundred pounds.

149. If any person knowingly buys or receives, or has in his possession any spirits after they have been removed from the place where they ought to have been charged with duty and before the duty payable thereon has been charged and paid or secured to be paid, or the spirits have been condemned as forfeited, he shall forfeit the spirits and incur a fine equal to treble the value of the spirits.

150. A person shall incur a fine of five hundred pounds if he commits any of the following offences:

- (a.) Assaults an officer acting under this Act, or any person acting in his aid.
- (b.) Assaults any person who has discovered or given, or is about to discover or give information or evidence against, or has seized or is bringing to justice, any offender against this Act.
- (c.) Assaults any person who has seized or is about to seize or examine any goods as forfeited under this Act.
- (d.) Forcibly opposes the execution of any of the powers given.
- (e.) Being armed with an offensive weapon, or in a violent manner, rescues any offender arrested or goods seized under this Act, or prevents the arrest of any such offender or seizure of any such goods, or offers or threatens to oppose the execution of any of the powers given by this Act.

151. Every person shall incur a fine of five hundred pounds who, in or with reference to any matter under the laws of excise relating to the duties on spirits,

- (a.) Not being authorised so to do, gives or promises to give, directly or indirectly, any reward to an officer or a person employed by the Commissioners, in respect of the performance or non-performance by any such officer or person of his duty or employment; or
- (b.) Agrees with or proposes to any such officer or person to do or permit to be done anything in contravention or evasion of this Act, or of his duty; or

(c) Being an officer or a person employed by the Commissioners—

- (i) demands or receives, except from or through the Commissioners, any reward in respect of the performance or non-performance of his duty or employment, or
- (ii) by any wilful act, neglect, or default does, or permits, or agrees to do or permit anything in contravention or evasion of this Act or of his duty.

If any such officer or person is convicted of either of these offences he shall be thereafter disqualified from serving Her Majesty in any office or employment.

152. If any person by himself or by any person in his employment obstructs, hinders, or molests an officer or an officer of customs in the execution of his duty, or any person acting in the aid of any such officer, he shall incur a fine of two hundred pounds, and if the offender is a distiller the Commissioners may, upon his conviction, suspend or revoke his licence.

153. If any officer of the peace wilfully refuses or neglects to aid in the execution of this Act he shall, on summary conviction, incur a fine of twenty pounds.

154. (1.) Where any spirits or goods are forfeited under this Act they may be seized by an officer or an officer of customs.

(2.) Where any spirits or materials for making spirits are forfeited under this Act, all casks or other utensils containing the same shall also be forfeited.

(3.) Where any spirits are forfeited by an Excise trader, the Commissioners may, if they think fit, take from his stock, instead of the spirits forfeited, the same quantity of any other spirits.

#### *Informers.*

155. (1.) On the commission of any offence against this Act, the offender who, before any information is lodged against him in respect of the offence, first discovers and informs against any other offender, shall, on the conviction of the person against whom the information is given, be discharged and acquitted from all penalties or disqualification to which at the time of giving the information he may be liable by reason of the offence committed by him.

(2.) When, on the conviction of any person for an offence against this Act, the pecuniary penalty imposed for the offence is not paid and cannot be levied, or the person incurring the penalty is sent to prison in default of payment, the Commissioners may cause such reward as they think fit,

not exceeding in each case fifty pounds, to be paid in such shares and proportions as they think fit to the persons who appear to the Commissioners to be entitled thereto as informers.

#### *Procedure.*

156. Any fine for any offence against this Act may be sued for and recovered, and any goods, chattels, or commodities forfeited under this Act may be returned for condemnation and condemned in the manner provided by law for the recovery of fines or penalties and for the condemnation of goods forfeited under any Act or Acts for the time being in force relating to the revenue of excise or customs.

#### *Forms and Schedules.*

157. (1.) The several entries, notices, declarations, books, accounts, and returns under this Act shall be in the prescribed form.

(2.) But in any proceeding for an offence against this Act against an Excise trader any notice given or declaration made by him or on his behalf shall be valid as against him, notwithstanding any imperfection or defect in the form thereof, or in the giving, making, or service thereof.

158. All permits, certificates, forms of requisition, and other documents under this Act shall, subject to the provisions of this Act, be granted, obtained and used, under and in accordance with the provisions of any Acts of Parliament regulating the granting and using of permits and certificates, and the provisions of those Acts with respect to permits, certificates, and other similar documents granted, obtained, or used thereunder, shall apply to permits, certificates, and other similar documents granted, obtained, or used under this Act, and to the persons granting, obtaining, or using them.

159. The Commissioners and the Commissioners of Customs respectively shall prescribe such regulations as they may from time to time think necessary for carrying into execution the provisions of this Act.

160. The Schedules shall be construed and have effect as part of this Act.

161. Where any enactment or document refers to any Act or enactment repealed by this Act, it shall be construed as referring to this Act, or to the corresponding enactment of this Act.

#### *Savings and Repeal.*

162. (1.) The sections of this Act which prohibit the use of a distillery within a quarter of a mile from the premises of a rectifier and the use of rectifier's premises within a quarter of a mile

of a distillery shall not apply to any premises which on the fifth day of April one thousand eight hundred and twenty-five were entered and used by a distiller or rectifier if those premises had been so entered and used continuously since, and so long as they continue to be so entered and used, provided that there is not between the premises of the distiller and those of the rectifier any communication by which wort, wash, or spirits may be removed from the one to the other except an open public street or carriage road.

(2.) Nothing in this Act shall prevent the use by a distiller or rectifier, under and in accordance with a special licence granted by the Commissioners of the Treasury, of any premises which on the fifth day of April one thousand eight hundred and twenty-five were entered and used by a distiller or rectifier, and which have continued to be so entered and used up to the commencement of this Act until the expiration or revocation of such licence.

163. Nothing in this Act shall prevent the Commissioners from permitting any distiller or rectifier formerly working under any Act in force before the twenty-eighth day of August one thousand eight hundred and sixty, and having worked continually since, to keep or use such of the vessels or casks then fixed or used on his premises as are, in the judgment of the Commis-

sioners, secure and adapted to the purposes for which they are required under this Act.

164. The enactments specified in the Fifth Schedule are hereby repealed, from and after the commencement of this Act, to the extent specified in the third column of that Schedule.

Provided that all existing bonds and securities given under or in pursuance of any enactment hereby repealed shall have the same force and effect as if they had been given under or in pursuance of this Act, and this repeal shall not affect—

- (a) anything done or suffered before the commencement of this Act under any enactment repealed by this Act; nor
- (b) any right or privilege acquired, or duty or liability imposed or incurred under any enactment so repealed; nor
- (c) any fine, forfeiture, or other punishment incurred or to be incurred in respect of any offence committed before the commencement of this Act against any enactment so repealed; nor
- (d) the institution or prosecution to its termination of any legal proceeding or other remedy for ascertaining any such liability, or enforcing, or recovering any such fine, forfeiture, or punishment as aforesaid.

## SCHEDULES.

### FIRST SCHEDULE,

#### RULES AS TO VESSELS AND UTENSILS.

##### FIRST PART.

##### VESSELS TO BE ERECTED BEFORE MAKING ENTRY BY A DISTILLER.

The following vessels must be erected after the distiller's licence has been obtained, and before entry of a still is made, and must thereafter be kept during the continuance of the distiller's licence:—

a. If the still is of such kind that the produce of the wash on the first distillation is spirits and feints,—

- 1 wash charger.
- 1 feints receiver.
- 1 spirit receiver.

b. If the still is of such kind that the produce of the wash on the first distillation is low wines, then, in addition,—

- 1 low wines receiver.
- 1 low wines and feints charger.

##### SECOND PART.

##### MAXIMUM NUMBER OF VESSELS IN DISTILLERY.

There must not be kept in any distillery any vessel of the description herein-after mentioned in excess of the number herein-after specified in that behalf.

- 1 wash charger.
- 1 spirit receiver.
- 2 feints receivers.
- 2 low wines receivers.
- 2 low wines and feint chargers.

In connexion with each charger, one intermediate still charger.

But a distiller may keep two spirit receivers, if he affixes to each of them, to the satisfaction of the Commissioners, an apparatus for preventing the supply cock and the discharge cock being both open at the same time, and for registering the number of times each cock has been opened.

## THIRD PART.

CONSTRUCTION AND CONNEXION OF VESSELS  
IN DISTILLERY.*Fermenting Back.*

1. There must be fixed in every fermenting back, to the satisfaction of the proper officer, a discharge cock or plug and plug-hole, through which the wash in the back may be conveyed by a main pipe or open trough into the jack back or wash charger.

2. This pipe or trough must be so placed and fixed that all wash or liquor put therein be forthwith discharged into the jack back or wash charger, and not elsewhere.

3. There may be placed in a fermenting back a close metal pipe for conveying through the back hot or cold air or water to promote or retard the fermentation of the wort or wash, but this pipe must not open into the back.

4. Except as aforesaid, and except the pipe for conveying wort into the fermenting back from the coolers, and a sewer cock or plug for carrying off the water wherewith the back is cleansed, there must not be any pipe or conveyance entering into or passing out of the back.

*Wash Charger.*

5. The wash charger must be of capacity not less than half that of the largest fermenting back.

6. It must be connected with the fermenting backs by one close metal pipe, with one end fixed into the pump placed in the jack back, or if a jack back is not used, into the pipe or trough communicating with the fermenting backs, and the other end into the wash charger.

7. It must be connected with the wash stills by one close metal pipe, with a branch to each still, or to the intermediate still chargers.

8. It may be connected with the feints receiver by means of a close pump or metal pipe.

9. There must be a cock on each of these connecting pipes.

*Low Wines Receiver.*

10. A low wines receiver must be connected with the safe at the end of the worm of the wash still by one close metal pipe, attached to and leading directly from the safe in such manner that all low wines running from the safe into the pipe shall immediately be discharged into the receiver, and must have fixed in it a pump or discharge cock for the conveyance of low wines into the low wines and feints charger.

*Feints Receiver.*

11. A feints receiver must be connected with the safe at the end of the worm of the still by

one close metal pipe attached to and leading directly from the safe, in such manner that all feints running from the safe into the pipe shall immediately be discharged into the receiver, and must have fixed in it a pump or discharge cock for the conveyance of feints into the low wines and feints charger, or wash charger, or intermediate still charger.

*Low Wines and Feints Charger.*

12. A low wines and feints charger must be connected with the still by a close metal pipe with a cock thereon, one end of the pipe being fixed into the bottom of the charger, and the other attached to the pump or to the still, and the charger must be connected with the low wines receiver and feints receiver by close metal pipes, whereof one end must be fixed into the charger, and the other end attached to the pump or discharge cock fixed in each receiver.

*Spirit Receiver.*

13. A spirit receiver must be connected with the safe at the end of the worm of the still by one close metal pipe attached to and leading directly from the safe in such manner that all spirits running from the safe into the pipe shall immediately be discharged into the receiver.

14. There must be fixed in it either a pump or a proper discharge cock for drawing off the spirits from it, and conveying the same through one close metal pipe into the entered cask or vat in the spirit store.

*Spent Lees Receiver.*

15. A spent lees receiver must be connected with the low wines still by one close metal pipe with a cock thereon fixed into the receiver, and attached to and leading directly from the discharge cock of the still. In the bottom of the receiver there must be a discharge hole with a secure internal plug. At not more than one-third of its depth from the top there must be an opening covered and secured by a metal plate perforated with holes of not more than four-tenths of an inch in diameter.

*Intermediate Still Charger.*

16. An intermediate still charger must have one fixed pipe with a cock thereon leading from the wash charger or low wines and feints charger, one fixed discharge pipe with a cock thereon leading to the still, and may have one pipe with a cock thereon leading from the feints receiver, and one pipe leading from the water cistern.

*Store Casks or Vats.*

17. Every store cask or vat must be a close covered vessel, and must be secured with

fastenings to the satisfaction of the proper officer.

#### *General.*

18. Every wash charger, low wines receiver, feints receiver, low wines and feints charger, spirit receiver, spent lees receiver, and intermediate still charger, must be a close covered vessel, and, except as above specified, must not have any opening, or communication with any other vessel or utensil.

### FOURTH PART.

#### CONSTRUCTION AND FITTINGS OF STILL.

1. In every still there must be an opening to enable an officer to take gauges and samples. This opening must be not less than two inches in diameter, and must be so contrived that the officer may take samples from the still with a phial drawn perpendicularly through it.

2. Proper fastenings must be provided for locking and securing this opening, and for securing the head of the still, the furnace door thereof, and any cock or valve on any pipe conveying steam into or about the still.

3. A still and its worm may have an air valve or conductor approved by the Commissioners.

4. The end of the worm must be enclosed and secured in a safe in the prescribed manner.

5. There must be fixed to every still a discharge cock not more than three feet distant from the body of the still, and firmly attached to the still by a close metal pipe. This discharge cock must be so placed as to be easily accessible to the officer.

6. If there is not a spent lees receiver, the discharge cock on a low wines still must be kept securely locked by the officer, except when opened by him on reasonable notice given by the distiller. Such notice must not be given more than once in six hours.

7. Except as permitted or required by this Act, there must be no pipe leading directly or indirectly to or from a still, and no opening into or out of a still or the worm of a still.

### FIFTH PART.

#### SPIRIT RECEIVERS.

1. Every spirit receiver must be made, placed, and fixed to the satisfaction of the Commissioners.

2. It must be of a depth sufficient to admit of the gauge of spirits being taken of the depth of fifteen inches at least at the dipping hole.

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3. It must be so filled with spirits that at the time of gauging it for the purpose of charging duty the depth of spirits is not less than fifteen inches.

4. But where a spirit receiver was in use in a distillery before the 10th of October 1853, the Commissioners may allow its use, though the spirits distilled are insufficient to fill it to the depth of fifteen inches, and that where the depth of spirits in a spirit receiver is less than fifteen inches the charge of spirits therein shall be made according to the gauge indicated by the next tenth of an inch above the actual depth, and in respect of this excess in gauge the distiller shall be allowed a deduction of one half of a gallon in every hundred gallons charged.

5. Every distiller must, if so required by the Commissioners, erect and apply, at his own expense, any apparatus or machine which the Commissioners think proper for preventing the supply cock and the discharge cock of the spirit receiver being both open at the same time, and for registering the number of times each cock has been opened.

### SIXTH PART.

#### PIPES, COCKS, AND VALVES.

1. Every pipe used by the distiller must, unless used exclusively for the discharge of water and spent wash, be so fixed and placed as to be capable of being examined for the whole of its length.

2. The pipes must be painted and kept painted as follows:—

If for the conveyance of—

Wort or wash	-	-	red.
Low wines or feints	-	-	blue.
Spirits	-	-	black.
Water	-	-	white.

3. Every cock and valve kept or used by the distiller must be constructed in the prescribed or approved manner.

### SEVENTH PART.

#### DIPPING HOLES.

1. At or near the top of every entered cask or vat for storing or keeping spirits on the premises of a distiller, there must be a dipping hole at which an officer may conveniently take his dip or gauge of the contents of the vessel.

2. A metal plate must be fixed at the dipping hole to secure it from being worn or altered.

3. Every charger and receiver must have a sufficient cover with a dipping hole cut in it of the prescribed form and size.

4. If the Commissioners so direct, there must be two or more dipping holes in the cover of any

spirit receiver or store cask or vat used in a distillery, at such places in the cover as they direct.

5. Each dipping hole in a spirit receiver, low wines or feints receiver or charger, store cask, or vat, must be secured and kept secured to the satisfaction of the officer.

6. No alteration must be made in the dipping hole or level of any vessel or utensil.

#### EIGHTH PART.

##### PROVISION AND SITUATION OF ARTICLES REQUIRED OR ALLOWED.

1. Every distiller must, at his own expense, and to the satisfaction of the Commissioners, provide, place, affix, and maintain each utensil and fitting allowed or required by this Act.

2. Every distiller must, to the satisfaction of the Commissioners, place and keep each vessel and utensil on his premises in a convenient situation, and so as to be easy of access to the officer.

#### NINTH PART.

##### CASKS.

Every distiller must legibly cut, brand, or paint with oil colour on the outside of both the ends of every moveable cask used in his premises for keeping or delivering spirits, and keep so cut, branded, or painted, his name, the name of the place where his stock is kept, and the number of gallons which the cask is capable of containing, and, if that number is less than eighty, the quarter or quarters of a gallon of capacity above the number of entire gallons.

#### TENTH PART.

##### MARKING UTENSILS AND ROOMS.

1. Every distiller must cause to be legibly painted with oil colour, and must keep so painted, on some conspicuous part of every vessel or utensil intended to be used by him in his business, and of the outside of the door of every room and place wherein any part of his business

is to be carried on or any spirits are to be kept, the name of the vessel, utensil, room, or place, according to the purpose for which it is intended.

2. Where more than one vessel, utensil, room, or place is used for the same purpose all such vessels, utensils, rooms, or places must be marked by progressive numbers.

#### ELEVENTH PART.

##### COURSE OF WASH, LOW WINES, FEINTS, AND SPIRITS.

1. All wash must be fermented in the fermenting backs, and thence conveyed directly into the wash charger, and thence into the still for distillation.

2. All low wines, feints, and spirits running from the worm of the still must run thence directly into the safe at the end of the worm.

3. All low wines must be conveyed directly from the safe into the low wines receiver, and thence directly into the low wines and feints charger, and thence directly into the low wines still for re-distillation.

4. All spirits must be conveyed directly from the safe into the feints receiver or spirit receiver.

5. All spirits conveyed into the feints receiver must be conveyed thence directly into the low wines and feints charger or wash charger or intermediate still charger, and thence directly into the still for re-distillation.

6. No spirits conveyed into the spirit receiver may be re-distilled or may be removed therefrom except into the distiller's spirit store.

7. All spirits distilled in the distillery must, after the officer has taken an account of their quantity and strength, be forthwith conveyed through a close metal pipe from the spirit receiver into the store cask or vat in the spirit store.

8. Except after notice to, or in the presence of, an officer, access may not be had to the end of the worm of any still, or to any low wines, feints, or spirits, from the time of the extraction or distillation thereof in the still until they are taken account of by the officer in the proper receiver, or to any spirits in a store cask or vat.

## SECOND SCHEDULE.

TABLE A.

TABLE to be used in determining the original SPECIFIC GRAVITY of WORT or WASH.

Degrees of Spirit Indication.	Degrees of original Specific Gravity.	Degrees of Spirit Indication.	Degrees of original Specific Gravity.	Degrees of Spirit Indication.	Degrees of original Specific Gravity.	Degrees of Spirit Indication.	Degrees of original Specific Gravity.
·1	·3	4·1	15·5	8·1	34·3	12·1	54·9
·2	·6	4·2	16·0	8·2	34·8	12·2	55·4
·3	·9	4·3	16·4	8·3	35·4	12·3	55·9
·4	1·2	4·4	16·8	8·4	35·9	12·4	56·4
·5	1·5	4·5	17·3	8·5	36·5	12·5	56·9
·6	1·8	4·6	17·7	8·6	37·0	12·6	57·4
·7	2·1	4·7	18·2	8·7	37·5	12·7	57·9
·8	2·4	4·8	18·6	8·8	38·0	12·8	58·4
·9	2·7	4·9	19·1	8·9	38·6	12·9	58·9
1·0	3·0	5·0	19·5	9·0	39·1	13·0	59·4
1·1	3·3	5·1	19·9	9·1	39·7	13·1	60·0
1·2	3·7	5·2	20·4	9·2	40·2	13·2	60·5
1·3	4·1	5·3	20·9	9·3	40·7	13·3	61·1
1·4	4·4	5·4	21·3	9·4	41·2	13·4	61·6
1·5	4·8	5·5	21·8	9·5	41·7	13·5	62·2
1·6	5·1	5·6	22·2	9·6	42·2	13·6	62·7
1·7	5·5	5·7	22·7	9·7	42·7	13·7	63·3
1·8	5·9	5·8	23·1	9·8	43·2	13·8	63·8
1·9	6·2	5·9	23·6	9·9	43·7	13·9	64·3
2·0	6·6	6·0	24·1	10·0	44·2	14·0	64·8
2·1	7·0	6·1	24·6	10·1	44·7	14·1	65·4
2·2	7·4	6·2	25·0	10·2	45·1	14·2	65·9
2·3	7·8	6·3	25·5	10·3	45·6	14·3	66·5
2·4	8·2	6·4	26·0	10·4	46·0	14·4	67·1
2·5	8·6	6·5	26·4	10·5	46·5	14·5	67·6
2·6	9·0	6·6	26·9	10·6	47·0	14·6	68·2
2·7	9·4	6·7	27·4	10·7	47·5	14·7	68·7
2·8	9·8	6·8	27·8	10·8	48·0	14·8	69·3
2·9	10·2	6·9	28·3	10·9	48·5	14·9	69·9
3·0	10·7	7·0	28·8	11·0	49·0	15·0	70·5
3·1	11·1	7·1	29·2	11·1	49·6	15·1	71·1
3·2	11·5	7·2	29·7	11·2	50·1	15·2	71·7
3·3	12·0	7·3	30·2	11·3	50·6	15·3	72·3
3·4	12·4	7·4	30·7	11·4	51·2	15·4	72·9
3·5	12·9	7·5	31·2	11·5	51·7	15·5	73·5
3·6	13·3	7·6	31·7	11·6	52·2	15·6	74·1
3·7	13·8	7·7	32·2	11·7	52·7	15·7	74·7
3·8	14·2	7·8	32·7	11·8	53·3	15·8	75·3
3·9	14·7	7·9	33·2	11·9	53·8	15·9	75·9
4·0	15·1	8·0	33·7	12·0	54·3	16·0	76·5

TABLE B.

TABLE for determining the Weight per GALLON of SPIRITS by SYKES'S HYDROMETER.

1. Spirits which on Sykes's hydrometer indicate a number in Column A must be taken to be of the weight per gallon in pounds and decimal parts of a pound of spirits indicated by the corresponding number in column B.

2. To ascertain the quantity of spirits in cask their net weight must be divided by the number which in column B indicates their weight per gallon, and the product will be the quantity of the spirits in gallons and decimal parts of a gallon.

Column A. Indication on Sykes's Hydrometer.	Column B. Weight per Gallon.	Column A. Indication on Sykes's Hydrometer.	Column B. Weight per Gallon.	Column A. Indication on Sykes's Hydrometer.	Column B. Weight per Gallon.	Column A. Indication on Sykes's Hydrometer.	Column B. Weight per Gallon.
0	8·154	8	8·289	16	8·426	24	8·565
2	8·157	2	8·292	2	8·429	2	8·568
4	8·161	4	8·296	4	8·433	4	8·572
6	8·164	6	8·299	6	8·436	6	8·575
8	8·168	8	8·303	8	8·440	8	8·579
1	8·171	9	8·306	17	8·443	25	8·582
2	8·174	2	8·309	2	8·446	2	8·586
4	8·178	4	8·313	4	8·450	4	8·589
6	8·181	6	8·316	6	8·453	6	8·593
8	8·185	8	8·320	8	8·457	8	8·596
2	8·188	10	8·323	18	8·460	26	8·600
2	8·191	2	8·326	2	8·464	2	8·603
4	8·195	4	8·330	4	8·467	4	8·607
6	8·198	6	8·333	6	8·471	6	8·610
8	8·202	8	8·337	8	8·474	8	8·614
3	8·205	11	8·340	19	8·478	27	8·617
2	8·208	2	8·343	2	8·481	2	8·620
4	8·212	4	8·347	4	8·485	4	8·624
6	8·215	6	8·350	6	8·488	6	8·628
8	8·219	8	8·354	8	8·492	8	8·631
4	8·222	12	8·357	20	8·495	28	8·635
2	8·225	2	8·361	2	8·498	2	8·639
4	8·229	4	8·364	4	8·502	4	8·642
6	8·232	6	8·368	6	8·505	6	8·646
8	8·236	8	8·371	8	8·509	8	8·649
5	8·239	13	8·375	21	8·512	29	8·653
2	8·242	2	8·378	2	8·516	2	8·656
4	8·245	4	8·382	4	8·519	4	8·660
6	8·249	6	8·385	6	8·523	6	8·663
8	8·252	8	8·389	8	8·526	8	8·667
6	8·255	14	8·392	22	8·530	30	8·670
2	8·258	2	8·395	2	8·533	2	8·674
4	8·262	4	8·399	4	8·537	4	8·677
6	8·265	6	8·402	6	8·540	6	8·681
8	8·269	8	8·406	8	8·544	8	8·684
7	8·272	15	8·409	23	8·547	31	8·688
2	8·275	2	8·412	2	8·551	2	8·692
4	8·279	4	8·416	4	8·554	4	8·696
6	8·282	6	8·419	6	8·558	6	8·699
8	8·286	8	8·423	8	8·561	8	8·702

Column A. Indication on Sykes's Hydrometer.	Column B. Weight per Gallon.	Column A. Indication on Sykes's Hydrometer.	Column B. Weight per Gallon.	Column A. Indication on Sykes's Hydrometer.	Column B. Weight per Gallon.	Column A. Indication on Sykes's Hydrometer.	Column B. Weight per Gallon.
32	8·706	42	8·885	52	9·069	62	9·256
2	8·709	2	8·889	2	9·073	2	9·260
4	8·713	4	8·892	4	9·076	4	9·264
6	8·716	6	8·896	6	9·080	6	9·267
8	8·720	8	8·899	8	9·083	8	9·271
33	8·723	43	8·903	53	9·087	63	9·275
2	8·727	2	8·907	2	9·091	2	9·279
4	8·730	4	8·911	4	9·095	4	9·283
6	8·734	6	8·914	6	9·098	6	9·286
8	8·737	8	8·918	8	9·102	8	9·290
34	8·741	44	8·922	54	9·106	64	9·294
2	8·745	2	8·926	2	9·110	2	9·298
4	8·748	4	8·929	4	9·114	4	9·302
6	8·752	6	8·933	6	9·117	6	9·305
8	8·755	8	8·936	8	9·121	8	9·309
35	8·759	45	8·940	55	9·125	65	9·313
2	8·763	2	8·944	2	9·129	2	9·317
4	8·766	4	8·947	4	9·132	4	9·321
6	8·770	6	8·951	6	9·136	6	9·324
8	8·773	8	8·954	8	9·139	8	9·328
36	8·777	46	8·958	56	9·143	66	9·332
2	8·781	2	8·962	2	9·147	2	9·336
4	8·784	4	8·965	4	9·151	4	9·340
6	8·788	6	8·969	6	9·154	6	9·344
8	8·791	8	8·972	8	9·158	8	9·348
37	8·795	47	8·976	57	9·162	67	9·352
2	8·799	2	8·980	2	9·166	2	9·356
4	8·802	4	8·984	4	9·170	4	9·360
6	8·806	6	8·987	6	9·173	6	9·363
8	8·809	8	8·991	8	9·177	8	9·367
38	8·813	48	8·995	58	9·181	68	9·371
2	8·817	2	8·999	2	9·185	2	9·375
4	8·820	4	9·002	4	9·189	4	9·379
6	8·824	6	9·006	6	9·192	6	9·382
8	8·827	8	9·009	8	9·196	8	9·386
39	8·831	49	9·013	59	9·200	69	9·390
2	8·835	2	9·017	2	9·204	2	9·394
4	8·838	4	9·021	4	9·207	4	9·398
6	8·842	6	9·024	6	9·211	6	9·401
8	8·845	8	9·028	8	9·214	8	9·405
40	8·849	50	9·032	60	9·218	70	9·409
2	8·853	2	9·036	2	9·222	2	9·413
4	8·856	4	9·039	4	9·226	4	9·417
6	8·860	6	9·043	6	9·229	6	9·420
8	8·863	8	9·046	8	9·233	8	9·424
41	8·867	51	9·050	61	9·237	71	9·428
2	8·871	2	9·054	2	9·241	2	9·432
4	8·874	4	9·058	4	9·245	4	9·436
6	8·878	6	9·061	6	9·248	6	9·440
8	8·881	8	9·065	8	9·252	8	9·444

Column A. Indication on Sykes's Hydrometer.	Column B. Weight per Gallon.	Column A. Indication on Sykes's Hydrometer.	Column B. Weight per Gallon.	Column A. Indication on Sykes's Hydrometer.	Column B. Weight per Gallon.	Column A. Indication on Sykes's Hydrometer.	Column B. Weight per Gallon.
72	9·448	79	9·584	86	9·722	93	9·860
2	9·452	2	9·588	2	9·726	2	9·864
4	9·456	4	9·592	4	9·730	4	9·868
6	9·459	6	9·596	6	9·733	6	9·872
8	9·463	8	9·600	8	9·737	8	9·876
73	9·467	80	9·604	87	9·741	94	9·880
2	9·471	2	9·608	2	9·745	2	9·884
4	9·475	4	9·612	4	9·749	4	9·888
6	9·479	6	9·615	6	9·753	6	9·892
8	9·483	8	9·619	8	9·757	8	9·896
74	9·487	81	9·623	88	9·761	95	9·900
2	9·491	2	9·627	2	9·765	2	9·904
4	9·495	4	9·631	4	9·769	4	9·908
6	9·498	6	9·635	6	9·773	6	9·913
8	9·502	8	9·639	8	9·777	8	9·917
75	9·506	82	9·643	89	9·781	96	9·921
2	9·510	2	9·647	2	9·785	2	9·925
4	9·514	4	9·651	4	9·789	4	9·929
6	9·517	6	9·655	6	9·792	6	9·934
8	9·521	8	9·659	8	9·796	8	9·938
76	9·525	83	9·663	90	9·800	97	9·942
2	9·529	2	9·667	2	9·804	2	9·946
4	9·533	4	9·671	4	9·808	4	9·950
6	9·537	6	9·674	6	9·812	6	9·955
8	9·541	8	9·678	8	9·816	8	9·959
77	9·545	84	9·682	91	9·820	98	9·963
2	9·549	2	9·686	2	9·824	2	9·967
4	9·553	4	9·690	4	9·828	4	9·972
6	9·557	6	9·694	6	9·832	6	9·976
8	9·561	8	9·698	8	9·836	8	9·981
78	9·565	85	9·702	92	9·840	99	9·985
2	9·569	2	9·706	2	9·844	2	9·989
4	9·573	4	9·710	4	9·848	4	9·994
6	9·576	6	9·714	6	9·852	6	9·998
8	9·580	8	9·718	8	9·856	8	10·003
						100	10·007

### THIRD SCHEDULE.

#### RULES WITH RESPECT TO RECTIFIERS.

##### First Part.

1. A rectifier may not have any opening, fixed pipe, or conveyance leading to or from a still used by him, except one charging pipe leading to the still, and the discharge cock and the head of the still terminating in the worm.

2. A rectifier must permit the charge and dis-

charge cock of every still used by him to be secured by the officer, and kept so secured whilst the still is at work.

##### Second Part.

1. The discharge cock of every still used by a rectifier must be so placed that the officer may have convenient access thereto, and for this purpose must be continued in a straight line from

the body of the still, and must not project more than three feet therefrom.

2. A rectifier must, before beginning to draw off spirits from a still, charge the still with a quantity of liquor, in the proportion of not less than seven parts in ten of the whole quantity which the still, including the head, is capable of containing, and must keep the still so charged until he begins to draw off spirits therefrom.

3. Every still must be worked off within sixteen hours from the time of the officer's taking the gauge thereof.

4. A rectifier must, as soon as his still has been worked off, remove the head therefrom, unless it is permanently fixed to the body of the still, and the head so removed must not be replaced until the still is again charged and ready to be worked.

5. A rectifier must not allow his still to be worked until the officer has examined the quality of the spirits therein.

until the still has been fully charged, and until he has examined its contents and seen the head of the still put on and ready to be locked down.

4. The officer shall not be bound to remain for this purpose more than one hour at any one time, and if within one hour after his arrival the still is not charged, and its head ready to be locked down, another notice shall be requisite.

5. Whenever any vessel, utensil, cock, pipe, pump, or other article on the premises of a rectifier which is required by law to be locked and secured has to be opened for the purpose of any cleaning, repair, or improvement, the officer shall, on receiving a written request for that purpose, open the same, and keep it open whilst the work is in progress. He must close every such vessel or article every evening as soon as the work is finished for the day, but must attend to open it at six o'clock every morning until the work is completed.

#### *Fourth Part.*

Where the strength of any spirits forming part of the stock of a rectifier, by reason of their being compounded with other substances, cannot be ascertained by Sykes's hydrometer, he must, on request by an officer, cause the true quantity and strength of the spirits to be legibly marked on the outside of the cask or vessel containing the same, and to be kept so marked until the spirits are removed therefrom.

#### *Third Part.*

1. When a rectifier desires to have the furnace door or steam pipe of a still unlocked, he must give the officer not less than twelve hours' previous written notice, specifying the still, and the day and hour when he wishes to have the door or pipe unlocked.

2. The officer shall attend at the time so specified, or within one hour thereafter.

3. The officer must not open the door or pipe

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### FOURTH SCHEDULE.

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#### *Particulars to be specified in Request Note for Permit.*

Quantity and strength of spirits for which the permit is required.

Casks or other vessels in which the spirits are contained.

From whom and whence the spirits are to be sent.

To whom and whither the spirits are to be sent.

Mode of conveyance.

#### *Particulars to be specified in Certificate.*

Quantity, denomination, and strength of spirits sent out or delivered.

Number of casks or packages in which the spirits are contained.

Day and hour of sending out or delivery.  
From whom and whence sent or delivered.  
To whom and whither sent or delivered.  
Mode of conveyance.

#### *Particulars to be entered in Stock Book.*

##### *On receipt :—*

Quantity, denomination, strength and gallon computed at proof of spirits received.

Date of receipt.

From whom and whence received.

##### *On sending out or delivery :—*

Quantity, denomination, strength and gallons computed at proof of spirits sent or delivered.

Date of sending out or delivery.

To whom or whither sent or delivered.

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## FIFTH SCHEDULE.

## ENACTMENTS REPEALED.

Session and Chapter.	Title of Act.	Extent of Repeal.
10 Will. 3. c. 4.	- An Act to prohibit the excessive distilling of spirits and low wines from corn, and against the exporting of beer and ale, and to prevent frauds on distillers.	Sections five and eight.
30 Geo. 3. c. 38.	- An Act for repealing the duties upon licences for retailing wine and sweets and upon licences for retailing distilled spirituous liquors, and for granting other duties in lieu thereof.	Section fifteen.
4 Geo. 4. c. 94.	- An Act to grant certain duties of Excise upon spirits distilled from corn or grain in Scotland and Ireland, and upon licences for stills for making such spirits; and to provide for the better collecting and securing such duties, and for the warehousing of such spirits without payment of duty.	The whole Act.
6 Geo. 4. c. 80. -	- An Act to repeal the duties payable in respect of spirits distilled in England, and of licences for distilling, rectifying, or compounding such spirits, and for the sale of spirits, and to impose other duties in lieu thereof; and to provide other regulations for the collection of the said duties, and for the sale of spirits, and for the warehousing of such spirits without payment of duty, for exportation.	Section one hundred and forty-five.
18 & 19 Vict. c. 38.	- An Act to allow spirit of wine to be used duty free in the arts and manufactures of the United Kingdom.	The whole Act, except section three.
18 & 19 Vict. c. 94.	- An Act to impose increased rates of duty of Excise on spirits distilled in the United Kingdom, to allow malt, sugar, and molasses to be used duty free in the distilling of spirits, in lieu of allowances and drawbacks on such spirits, sugar, and molasses respectively; and to amend the laws relating to the duties of excise.	Section fourteen in part, namely, the words "and all malt" to be used in the "distillery shall be ground by metal rollers only."
23 & 24 Vict. c. 114.	- An Act to reduce into one Act and to amend the excise regulations relating to the distilling, rectifying, and dealing in spirits.	The whole Act.
24 & 25 Vict. c. 21.	- An Act for granting to Her Majesty certain duties of Excise and stamps.	Section two in part, namely, from "and any licensed" to the end of the section.
24 & 25 Vict. c. 91.	- An Act to amend the laws relating to the Inland Revenue.	Sections three, four, six, and twenty.
27 & 28 Vict. c. 12.	- An Act to amend the laws relating to the warehousing of British spirits.	The whole Act, except section twelve.
28 & 29 Vict. c. 96.	- An Act to amend the laws relating to the Inland Revenue.	Sections twenty-three, twenty-seven, twenty-eight, and twenty-nine.

Session and Chapter.	Title of Act.	Extent of Repeal.
28 & 29 Vict. c. 98.	- An Act to allow British compounded spirits to be warehoused upon drawback.	The whole Act, except section twelve.
29 & 30 Vict. c. 64.	- An Act to amend the laws relating to the Inland Revenue.	Sections seven, eight, and nine.
30 & 31 Vict. c. 27.	- An Act to allow warehoused British spirits to be bottled for home consumption.	The whole Act.
31 & 32 Vict. c. 124.	- An Act to amend the laws relating to the Inland Revenue.	Sections three, four, and five.
32 & 33 Vict. c. 103.	- An Act to amend the law relating to the warehousing of wines and spirits in Customs and Excise warehouses, and for other purposes relating to Customs and Inland Revenue.	Sections two, six, eight, twelve, and thirteen, and the other sections in Part I. (except section seven), so far as they relate to spirits, and sections fourteen and sixteen.
34 & 35 Vict. c. 103.	- An Act to amend the law relating to the Customs and Inland Revenue.	Sections twenty-one, twenty-two, and twenty-three.
37 & 38 Vict. c. 16.	- An Act to grant certain duties of Customs and Inland Revenue, to repeal and alter other duties, and to amend the laws relating to Customs and Inland Revenue.	Sections nineteen and twenty.
38 & 39 Vict. c. 23.	- An Act to grant certain duties of Customs and Inland Revenue, to alter other duties, and to amend the laws relating to Customs and Inland Revenue.	Section ten.
39 & 40 Vict. c. 16.	- An Act to grant and alter certain duties of Customs and Inland Revenue, and to amend the laws relating to Customs and Inland Revenue.	Section three.
39 & 40 Vict. c. 35.	- An Act for consolidating the Duties of Customs.	Section three in part, namely, the words "or Inland Revenue," "or Excise," "respectively," and "or Inland Revenue respectively," Section four in part, namely, the words "or Inland Revenue" and "or Inland Revenue respectively."
40 & 41 Vict. c. 13.	- An Act to grant certain duties of Customs and Inland Revenue, and to amend the laws relating to Customs, Inland Revenue, and savings banks.	Section eleven.
41 & 42 Vict. c. 15.	- An Act to grant certain duties of Customs and Inland Revenue, to alter other duties, and to amend the laws relating to Customs and Inland Revenue.	Section twenty-four.

## CHAP. 25.

*Metropolitan Board of Works (Money) Act, 1880.*

## ABSTRACT OF THE ENACTMENTS.

1. *Short title.*
2. *Construction of Act.*
3. *Interpretation.*
4. *Amendment of section 8 of 42 & 43 Vict. c. 69.*
5. *Power for Board to expend money for purposes of Parks and Open Spaces Acts up to 31st December 1880.*
6. *Power to Board to expend moneys during year ending 31st December 1881, for purposes of 18 & 19 Vict. c. 120. s. 144., and 25 & 26 Vict. c. 102. s. 72., of Street Improvements Act (35 & 36 Vict. c. clxiii.), of Parks and Open Spaces Acts, of Embankment Acts, improvement of Sun Street, of the obelisk on Victoria Embankment, and of the Toll Bridges Act, 40 & 41 Vict. c. xcix.*
7. *Power for Board to expend money for purposes of fire brigade.*
8. *Power to Board to expend money for purposes of street improvements under 40 & 41 Vict. c. ccxxv., 42 & 43 Vict. c. xcvi.*
9. *Power for Board to expend money for purposes of schemes under 38 & 39 Vict. c. 36.*
10. *Special power to Board to expend money for purposes of main drainage and main sewers.*
11. *Power for Board to lend to vestry or district board.*
12. *Power for Board to lend to board of guardians.*
13. *Extension of amount of loans by Board to managers of Metropolitan Asylum District.*
14. *Power to Board to lend to School Board for London.*
15. *Power for Board to lend to corporations, burial boards, &c.*
16. *Payment of expenses relating to the Committee on London Water Supply.*
17. *Board may raise money by bills.*
18. *Form and length of currency and interest on Metropolitan bills.*
19. *Payment and applications of proceeds of Metropolitan bills and charge of bills on consolidated rate.*
20. *Mode of issue of Metropolitan bills.*
21. *Regulations to be made by the Board as to issue, cancellation, &c. of Metropolitan bills.*
22. *Power to create consolidated stock partially suspended while Metropolitan bills authorised to be raised.*
23. *Application of certain provisions of 24 & 25 Vict. c. 98. to Metropolitan bills.*
24. *Arrangement with bank as to issue, &c. of Metropolitan bills.*
25. *32 & 33 Vict. c. 102. s. 38. not to extend to money raised under this Act.*
26. *Repayments to be carried to consolidated loans fund.*
27. *Limit to exercise by Board of borrowing powers.*

## SCHEDULES.

An Act for further amending the Acts relating to the raising of Money by the Metropolitan Board of Works; and for other purposes relating thereto.  
(26th August 1880.)

WHEREAS by the Metropolitan Board of Works (Loans) Act, 1875 (in this Act referred to as "the Act of 1875"), the raising of money by the Metropolitan Board of Works (in this Act referred to as "the Board") for the purposes therein specified was regulated, and provision was made requiring that the borrowing powers granted to the Board by Parliament for the purposes therein named should for the future be limited both in time and amount:

And whereas by the Metropolitan Board of Works (Money) Act, 1879 (in this Act referred to

as the "Act of 1879"), the Board were empowered to raise certain sums of money for the purposes in the said Acts mentioned, and limits of time and amount within which the powers by the said Act granted might be exercised were fixed:

And whereas the powers for the raising of money by the Act of 1879 conferred upon the Board have been partially exercised, but it is expedient that the Board should have power to raise certain further sums of money, specified in the First Schedule to this Act annexed, for the purposes, upon the terms, and subject to the limitations herein-after mentioned, and that the Act of 1879 should be amended:

And whereas it is expedient that the Board should be empowered to raise any of the moneys which they are by this Act authorised to raise, and which it may be convenient to raise for a

temporary period, by the issue of bills, with the consent of the Treasury, for not less than three and not more than twelve months, to be repaid out of moneys raised by the creation of consolidated stock under this Act :

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. This Act may be cited as the Metropolitan Board of Works (Money) Act, 1880, and the Metropolitan Board of Works (Money) Acts, 1875 to 1879, and this Act may be cited together as the Metropolitan Board of Works (Money) Acts, 1875 to 1880.

2. This Act shall be read and have effect as one with the Metropolitan Board of Works (Loans) Acts, 1869 to 1871, and the Metropolitan Board of Works (Money) Acts, 1875 to 1879.

3. The expression "Parks and Open Spaces Acts" in this Act shall mean the enactments specified in Part I. of the Second Schedule to this Act annexed.

The expression "Embankment Acts" in the Metropolitan Board of Works (Loans) Act, 1869, and in this Act shall mean the series of Acts specified in Part II. of the Second Schedule to this Act annexed, and the Metropolitan Board of Works (Loans) Act, 1869, shall be construed accordingly.

The expression "Main Drainage Acts" in this Act shall have the same meaning as is assigned to the same term in the Metropolitan Board of Works (Loans) Act, 1869.

4. Section eight of the Act of 1879 shall be read and construed as if the aggregate amount which the Board was thereby authorised to expend for the purposes of the Fire Brigade Act, 1865, had been limited to a sum not exceeding thirty thousand pounds instead of twenty thousand pounds.

5. The Board may from time to time, up to the thirty-first day of December one thousand eight hundred and eighty, expend for the purposes of the Parks and Open Spaces Acts such money as they think fit, not exceeding thirty thousand pounds, in addition to any moneys authorised to be expended on certain of the parks and open spaces under Acts passed previously to the passing of this Act.

The Board in order to raise money for the purposes of this section may from time to time create consolidated stock.

6. The Board may from time to time, during the year ending the thirty-first day of December one thousand eight hundred and eighty-one, expend for the purposes herein-after mentioned such moneys as they may think fit, not exceeding the amounts limited in relation to such purposes respectively.

(a.) For the purposes mentioned in section one hundred and forty-four of the Metropolis Management Act, 1855, and section seventy-two of the Metropolis Management Amendment Act, 1862, one hundred thousand pounds ;

(b.) For the purposes of the Metropolitan Street Improvements Act, 1872, forty-two thousand and twenty-eight pounds three shillings and five pence, provided that the moneys hereby authorised to be expended for the said purposes, together with any moneys expended for the said purposes under the authority of the Metropolitan Board of Works (Money) Act, 1877, and of the Metropolitan Board of Works (Money) Act, 1878, and of the Act of 1879, shall not exceed sixty thousand pounds ;

(c.) For the purposes of the Parks and Open Spaces Acts twenty-five thousand pounds ;

(d.) For the purposes of completing the works authorised by the Embankment Acts and for completing the Sun Street improvement under the Metropolitan Board of Works Various Powers Act, 1876, ten thousand pounds ;

(e.) For the purposes of defraying the costs of tablets of inscription on the four sides of the base of the obelisk on the Victoria Embankment, of the alteration of the adjoining granite pedestals, and placing sphinxes thereon, and of other permanent work incurred and to be incurred in carrying out the general design in relation to the said obelisk, seven thousand pounds ; provided that the moneys hereby authorised to be expended for the said purposes, together with any moneys expended for the said purposes under the Act of 1879, shall not exceed seven thousand pounds ;

(f.) For the purposes of the Metropolis Toll Bridges Act, 1877, sixty-two thousand five hundred and fifty-one pounds two shillings and sixpence ; provided that the moneys hereby authorised to be expended for the said purposes, together with any moneys expended for the said purposes under the authority of the Metropolis Toll Bridges Act, 1877, shall not exceed one million five hundred thousand pounds ;

- (g.) For the purpose of defraying the cost of certain special works for the maintenance and repair of certain of the bridges acquired by the Board under the Metropolis Toll Bridges Act, 1877, fifty thousand pounds; provided that the moneys hereby authorised to be expended for the said purposes shall be in addition to the moneys authorised to be borrowed by section twenty-six of the Metropolis Toll Bridges Act, 1877, for the purposes of the said Act, and the said section shall be construed as though the amount thereby limited were increased by the said sum of fifty thousand pounds hereby authorised to be expended.

The Board in order to raise money for the several purposes mentioned in this section may from time to time create consolidated stock.

7. The Board may from time to time, during the year ending the thirty-first day of December one thousand eight hundred and eighty-one, expend for the purposes of providing station houses, fire engines, fire escapes, and permanent plant for the purposes of the Fire Brigade Act, 1865, such money as they think fit, not exceeding thirty thousand pounds.

The Board in order to raise money for the purpose of this section may from time to time create consolidated stock.

The Board shall from time to time carry to the consolidated loans fund such sums as the Treasury approve, as being, in their opinion, sufficient to redeem within thirty years from the date of the creation of stock for purposes of this section an amount of consolidated stock equal to that so created.

8. The Board may from time to time, during the year ending the thirty-first day of December one thousand eight hundred and eighty-one, expend—

- (a.) For the purposes of the Metropolitan Street Improvements Act, 1877, such money as they think fit, not exceeding one million five hundred thousand pounds, or such further sum as the Treasury may approve; provided that the moneys hereby authorised to be expended for the said purposes, together with any moneys expended for the said purposes under the authority of the Metropolitan Board of Works (Money) Act, 1877, and of the Metropolitan Board of Works (Money) Act, 1878, and of the Act of 1879, shall not exceed three million seven hundred and twelve thousand five hundred and seven pounds; and

- (b.) For the purposes of the Thames River (Prevention of Floods) Act, 1879, such money as they think fit, not exceeding one hundred thousand pounds, or such further sum as the Treasury may approve; provided that the moneys hereby authorised to be expended for the said last-mentioned purposes, together with any moneys expended for the said last-mentioned purposes under the Act of 1879, shall not (except with the sanction of the Treasury) exceed one hundred thousand pounds.

The Board in order to raise money for the several purposes mentioned in this section may from time to time create consolidated stock: Provided always, that the money to be raised and the consolidated stock to be created by the Board under this section shall be raised and created by them from time to time in such amounts and at such times only as the Board shall actually require, and as the Treasury shall approve, for the purpose of carrying into effect the provisions of the said Acts respectively in a proper and efficient manner.

9. The Board may from time to time, during the year ending the thirty-first day of December one thousand eight hundred and eighty-one, expend for the purposes of schemes made by the Board under the authority of the Artizans and Labourers Dwellings Improvement Act, 1875, and confirmed by Provisional Order and Act of Parliament, such money as they think fit, not exceeding five hundred thousand pounds, or such further sum as the Treasury may approve.

The Board in order to raise money for purposes of this section may from time to time create consolidated stock, but there shall be repaid (as provided by the Artizans and Labourers Dwellings Improvement Act, 1875,) to the consolidated rate out of the local rate, as defined by the Artizans and Labourers Dwellings Improvement Act, 1875, all moneys required for payment of dividends on and the redemption of the consolidated stock created for the purposes of this section: Provided always, that the money to be raised and the consolidated stock to be created by the Board under this section shall be raised and created by them from time to time in such amounts and at such times only as the Board shall actually require, and as the Treasury shall approve, for the purpose of carrying such schemes into effect in a proper and efficient manner.

10. The Board may, up to the thirty-first day of December one thousand eight hundred and eighty-one, expend for the purpose of adding to, extending, enlarging, improving, and completing the works authorised by the Main Drainage Acts, and for rendering the same efficient in such

manner as to them may seem proper, and for extending, enlarging, and improving the main sewers transferred to and vested in the Board under and by virtue of the Metropolis Management Act, 1855, and for making such other sewers and works, and such alterations and diversions of such existing main sewers, as may to them seem proper for the purpose of relieving, supplementing, and rendering such main sewers efficient, and for carrying into effect the several provisions in relation thereto mentioned in the said Act, such moneys as they may think fit, not exceeding three hundred thousand pounds, in addition to any moneys which they are authorised to expend under any Acts passed previously to the passing of this Act, and for such purposes the Board may from time to time create consolidated stock, and all the provisions of the Main Drainage Acts and the Metropolis Management Act, 1855, and the Acts altering or amending the same for the time being in force, relating to the execution of works authorised by the said Acts respectively, shall continue in force, and shall extend and apply respectively to the works executed by means of money raised in pursuance of this section, and all stock created under the authority of this section shall be deemed to be created for the purposes of the above-mentioned Acts respectively.

11. Where a vestry or district board constituted under the Metropolis Management Act, 1855, desire, in pursuance of authority vested in them by Act of Parliament, to borrow money for the purpose of any work, or for the purpose of paying off any loan or debt, or for any other purpose, and it appears to the Board and to the Treasury expedient that the repayment of the money to be borrowed shall be spread over a series of years, then from time to time during the year ending the thirty-first day of December one thousand eight hundred and eighty-one the Board may lend to the vestry or district board, and the vestry or district board may borrow from the Board, such money as the Board think fit, and as the vestry or district board are authorised and desire to borrow.

The aggregate amount lent by the Board under this section shall not exceed two hundred thousand pounds.

The Board in order to raise money for purposes of this section may from time to time create consolidated stock.

Money lent by the Board under this section shall, notwithstanding anything in any other Act, be repaid to them, with interest, within such time after the borrowing as the Board and the borrowers, with the approval of the Treasury, agree, not exceeding, in case of a loan for purposes of improvements effected by the widening of streets or bridges, or for the purpose of purchase of land

in fee simple, sixty years, and for any other purpose thirty years.

In case of a loan required to be for not exceeding thirty years the Board shall from time to time carry to the consolidated loans fund such sums as the Treasury approve as being in their opinion sufficient to redeem within the period for which the loan is made, not exceeding thirty years from the date of the creation of stock for purposes of this section, an amount of consolidated stock equal to that so created.

12. Where a board of guardians of a union or parish wholly or for the greater part in the metropolis, as defined in the Metropolis Management Act, 1855, desire, in pursuance of authority vested in them, to borrow money for the purpose of any work, or for the purpose of paying off any loan or debt, or for any other purpose, and it appears to the Board and the Treasury expedient that the repayment of the money to be borrowed shall be spread over a series of years, then from time to time during the year ending the thirty-first day of December one thousand eight hundred and eighty-one the Board may lend to the board of guardians, and the board of guardians may borrow from the Board, such money as the Board think fit, and as the board of guardians are authorised and desire to borrow.

The aggregate amount lent by the Board under this section shall not exceed one hundred and fifty thousand pounds.

The Board in order to raise money for purposes of this section may from time to time create consolidated stock.

Money lent by the Board under this section shall, notwithstanding anything in any other Act, be repaid to them, with interest, within such time after the borrowing as the Board and the borrowers, with the approval of the Treasury, agree, not exceeding thirty years.

The Board shall from time to time carry to the consolidated loans fund such sums as the Treasury approve as being in their opinion sufficient to redeem within the period for which the loan is made, not exceeding thirty years from the date of the creation of stock for purposes of this section, an amount of consolidated stock equal to that so created.

13. The Board may from time to time, during the year ending the thirty-first day of December one thousand eight hundred and eighty-one, lend to the managers of the Metropolitan Asylum District, in addition to the sums authorised by the Metropolitan Board of Works (Loans) Acts, 1869 to 1871, and the Metropolitan Board of Works (Money) Acts, 1875 to 1879, such sums as the managers are from time to time authorised by the Local Government Board to borrow in pursuance of the Metropolitan Poor Act, 1867,

and any Acts altering or amending the same for the time being in force, not exceeding in the whole fifty thousand pounds, and section thirty-seven of the Metropolitan Board of Works (Loans) Act, 1869, shall be construed as if the sum of one million and ten thousand pounds were therein substituted for five hundred thousand pounds.

14. The Board may from time to time, during the year ending the thirty-first day of December one thousand eight hundred and eighty-one, lend to the School Board for London, in accordance with the provisions of the Elementary Education Acts, 1870 and 1873, and any Act or Acts altering or amending the same for the time being in force, such sums as the said School Board are from time to time authorised to borrow by the Education Department in pursuance of the said Acts, not exceeding in the whole the sum of five hundred thousand pounds.

The Board in order to raise money for the purpose of this section may from time to time create consolidated stock.

The moneys so lent by the Board shall be repaid to them by the said School Board, with interest, within such period, not exceeding fifty years, as may be agreed upon between the Board and the said School Board, with the sanction of the Education Department, subject to the approval of the Treasury.

15. Where any corporation, body of commissioners, burial board, or other public body having power to levy, directly or indirectly, rates in respect of lands in the metropolis, as defined in the Metropolis Management Act, 1855, or to make charges on rates leviable in the metropolis as so defined, or to take within the metropolis as so defined dues or impositions in the nature of rates, desire, in pursuance of authority vested in them, to borrow money for the purpose of any work, or for the purpose of paying off any loan or debt, or for any other purpose, and it appears to the Board and to the Treasury expedient that the repayment of the money to be borrowed shall be spread over a series of years, then from time to time, during the year ending the thirty-first day of December one thousand eight hundred and eighty-one, the Board may lend to the corporation, commissioners, burial board, or other public body, and they may borrow from the Board, such money as the Board think fit, and as the corporation, commissioners, burial board, or other public body are authorised and desire to borrow.

The aggregate amount lent by the Board under this section shall not exceed one hundred thousand pounds.

The Board in order to raise money for purposes of this section may from time to time create consolidated stock.

Money lent by the Board under this section

shall, notwithstanding anything in any other Act, be repaid to them, with interest, within such time after the borrowing as the Board and the borrowers, with the approval of the Treasury, agree, not exceeding, in case of a loan for purposes of improvements effected by the widening of streets or bridges, or for the purpose of purchase of land in fee simple, sixty years, and for any other purpose thirty years.

In case of a loan required to be for not exceeding thirty years the Board shall from time to time carry to the consolidated loans fund such sums as the Treasury approve, as being in their opinion sufficient to redeem within the period for which the loan is made, not exceeding thirty years from the date of the creation of stock for purposes of this section, an amount of consolidated stock equal to that so created.

Nothing in this section shall apply to the case of a vestry or district board constituted under the Metropolis Management Act, 1855, a board of guardians, the managers of the Metropolitan Asylum District, or the School Board for London.

16. The Board may, as part of their general expenses, pay all costs and charges and expenses incurred by them of and incidental to the proceedings of the Select Committee on London Water Supply in the present session; such costs, charges, and expenses to be duly audited and taxed as if they related to a Private Bill.

17. Notwithstanding anything in this Act or in any other Act relating to the Board contained, the Board, with the consent of the Treasury, may from time to time, as they think fit, raise any part of the moneys which they are by this Act authorised to raise, not exceeding in the whole the sum of five hundred thousand pounds, by the issue of bills under this Act.

18. A bill under this Act (in this Act referred to as a "Metropolitan bill") shall be a bill in form prescribed by a regulation made in pursuance of this Act for the payment of the principal sum named therein, in the manner and at the date therein mentioned, so that the date be not less than three nor more than twelve months from the date of the bill.

Interest shall be payable in respect of a Metropolitan bill at such rate and in such manner as the Board, with the consent of the Treasury, may direct.

19. All moneys raised by the issue of any Metropolitan bills shall be paid to the Board, and shall be expended by them for the purposes for which the same are by this Act authorised to be raised respectively. The principal money and interest expressed in any Metropolitan bill to be payable shall be charged on the consolidated rate,

and shall be payable out of the said rate, or, as regards principal, out of moneys raised by the creation of consolidated stock under this Act, for the purpose for which such principal money has been expended, and, as regards interest, out of the consolidated loans fund.

20. With respect to the issue of Metropolitan bills the following provisions shall have effect :

- (1.) Metropolitan bills shall be issued under the authority of a warrant sealed by the Board and countersigned on behalf of the Treasury ;
- (2.) Each Metropolitan bill shall be for the amount directed by the Board ;
- (3.) Each Metropolitan bill shall be sealed by the Board, the sealing being attested by the clerk in his own name.

21. The Board may from time to time, with the consent of the Treasury, make, and when made rescind, alter, and add to, regulations for carrying into effect the provisions of this Act with respect to Metropolitan bills, and in particular—

- (1.) For regulating (subject to the provisions of this Act) the preparation, form, mode of issue, mode of payment, and cancellation of Metropolitan bills ;
- (2.) For regulating the issue of a new Metropolitan bill in lieu of one defaced, lost, or destroyed ;
- (3.) For preventing by the use of counterfoils or of a special description of paper or otherwise, fraud in relation to the Metropolitan bills ;
- (4.) For the proper discharge to be given upon the payment of a Metropolitan bill.

Every regulation purporting to be made in pursuance of this section shall be deemed to be within the powers of this Act, and shall have effect as if it were enacted in this Act.

22. For the purpose of paying off the principal money of any Metropolitan bills, the Board may raise any sum which they are by this Act empowered to raise by the creation of consolidated stock for the purposes for which such principal money has been expended, not exceeding the amount of such principal money ; but, save as aforesaid, the powers given to the Board by this

Act to raise moneys for any purposes by the creation of consolidated stock shall be suspended to the amounts and for the periods to and for which moneys are for the time being authorised by the Treasury to be raised for such purposes respectively by the issue of Metropolitan bills.

23. Sections eight, nine, ten, and eleven of the Act of the twenty-fourth and twenty-fifth years of the reign of Her present Majesty, chapter ninety-eight, intituled "An Act to consolidate" and amend the statute law of England and "Ireland relating to indictable offences by "forgery" (which sections relate to the forgery of and other frauds relating to Exchequer bills), shall apply to the Metropolitan bills, and shall have effect as if "Exchequer bill" in those sections included "Metropolitan bill."

24. The Board may enter into such arrangements with any bank approved by the Treasury for carrying into effect the provisions of this Act with respect to the issue of the Metropolitan bills, and to the payment of the principal sum named therein, and to all matters relating thereto, and for the proper remuneration of such bank with reference thereto, as they may think proper and as may be approved by the Treasury.

25. The limitation on the borrowing power of the Board contained in section thirty-eight of the Metropolitan Board of Works (Loans) Act, 1869, shall not extend to money raised by the Board for purposes mentioned in this Act.

26. All sums received by the Board in respect of interest on or principal of any loan made by them under this Act shall be carried to the consolidated loans fund.

27. During the year ending the thirty-first day of December one thousand eight hundred and eighty-one the Board shall not (except for such temporary period, not exceeding six months, as the Treasury may from time to time sanction) raise otherwise than in conformity with and to the extent mentioned in this Act any money under any powers of borrowing conferred upon the Board either by this Act or any other Act whatsoever.



## FIRST SCHEDULE.

## NEW MONEY POWERS CONFERRED IN THIS ACT.

Section of Act.	Purpose.	Amount.		
	SUPPLEMENTAL UP TO 31ST DEC. 1880.	£	s.	d.
4	Fire Brigade - - - - -	10,000	0	0
5	Parks, commons, and open spaces - - - - -	30,000	0	0
	1ST JAN. TO 31ST DEC. 1881.			
	Minor improvements - - - - -	100,000	0	0
	Street Improvements Act of 1872 - - - - -	42,028	3	5
	Parks, commons, and open spaces - - - - -	25,000	0	0
6	Thames Embankments, Queen Victoria Street, Northumberland Avenue, and Sun Street - - - - -	10,000	0	0
	Obelisk on Victoria Embankment - - - - -	7,000	0	0
	Toll Bridges - - - - - { £62,551 2s. 6d. £50,000 0s. 0d. }	112,551	2	6
7	Fire Brigade - - - - -	30,000	0	0
8	Street Improvements Act of 1877 - - - - -	1,500,000	0	0
9	Thames River (Prevention of Floods) - - - - -	100,000	0	0
10	Artizans Dwellings - - - - -	500,000	0	0
11	Drainage extension works - - - - -	300,000	0	0
12	Loans to vestries and district boards - - - - -	200,000	0	0
13	Loans to guardians - - - - -	150,000	0	0
14	Loans to managers of Metropolitan Asylum District - - - - -	50,000	0	0
15	Loans to School Board for London - - - - -	500,000	0	0
	Loans to public bodies - - - - -	100,000	0	0
	Amounts included above which are re-grants of borrowing power previously granted:	3,766,579	5	11
		£	s.	d.
	Minor improvements - - - - -	56,565	17	3
	Street Improvements Act, 1872 - - - - -	42,028	3	5
	Obelisk on Victoria Embankment - - - - -	7,000	0	0
	Toll Bridges - - - - -	62,551	2	6
	Fire Brigade - - - - -	13,061	19	11
	Street Improvements Act, 1877 - - - - -	1,500,000	0	0
	Thames River (Prevention of Floods) - - - - -	100,000	0	0
	Artizans Dwellings - - - - -	500,000	0	0
	Loans to vestries, &c. - - - - -	1,400	0	0
	Loans to guardians - - - - -	103,500	0	0
	Loans to School Board for London - - - - -	500,000	0	0
	Loans to public bodies - - - - -	27,000	0	0
		2,913,107	3	1
	New borrowing power for Board - - - - -	485,372	2	10
	For loans to other bodies - - - - -	368,100	0	0
		853,472	2	10

## SECOND SCHEDULE.

## PARKS AND OPEN SPACES ACTS.

## PART I.

**The Finsbury Park Act, 1857, 20 & 21 Vict. c. cl.**  
**Southwark Park Act, 1864, 27 Vict. c. iv.**  
**Gardens in Towns Protection Act, 1863, 26 Vict. c. 13.**  
**Leicester Square Act, 1874, 37 Vict. c. x.**  
**Open Spaces (Metropolis) Act, 1877, 40 & 41 Vict. c. 35.**  
**Metropolitan Commons Act, 1866, 29 & 30 Vict. c. 122.**

"	"	" Amendment Act, 1869, 32 & 33 Vict. c. 107.
"	"	" 1878, 41 & 42 Vict. c. 71.
"	"	Supplemental Act, 1871 (Blackheath), 34 & 35 Vict. c. lvii.
"	"	" (Shepherd's Bush), 34 & 35 Vict. c. lxiiii.
"	"	" 1872 (Hackney Commons), 35 & 36 Vict. c. xliiii.
"	"	" 1873 (Tooting Beck Common), 36 & 37 Vict. c. lxxxvi.

**The Metropolitan Board of Works Various Powers Act, 1875 (Tooting Graveney Common), 38 & 39  
Vict. c. clxxix., sec. 14.**  
**Hampstead Heath Act, 1871, 34 & 35 Vict. c. lxxvii.**  
**Metropolitan Commons Supplemental Act, 1877 (Clapham Common and Bostall Heath),  
40 & 41 Vict. c. cci.**  
**Plumstead Common Act, 1878, 41 & 42 Vict. c. cxlv.**  
**Wormwood Scrubs Act, 1879, 42 & 43 Vict. c. clx.**

## PART II.

### ***Embankment Acts.***

<b>The Thames Embankment (North) Act, 1862, 25 &amp; 26 Vict. c. 93., 26 &amp; 27 Vict. c. 45.</b>
<b>Thames Embankment (South) Act, 1863, 26 &amp; 27 Vict. c. 75.</b>
"    "    Amendment Act, 1864, 27 & 28 Vict. c. cxxxv., 27 & 28 Vict. c. 61.
"    "    (North and South) Act, 1868, 31 & 32 Vict. c. cxi., 31 & 32 Vict. c. 43.
"    "    (Chelsea) Act, 1868, 31 & 32 Vict. c. cxxxv., 32 & 33 Vict. c. 134.
"    "    (North) Act, 1870, 33 & 34 Vict. c. xcii.
"    "    "    "    1872, 35 & 36 Vict. c. lxvi.
"    "    (Land) Act, 1873, 36 & 37 Vict. c. 40.
"    "    (South) Act, 1873, 36 Vict. c. vii.
<b>Charing Cross and Victoria Embankment Approach Act, 1873, 36 &amp; 37 Vict. c. c.</b>
<b>Metropolitan Board of Works Various Powers Act, 1876 (Chelsea Embankment), 39 &amp; 40 Vict. c. lxxix.</b>

## СНАР. 26.

*Married Women's Policies of Assurance (Scotland) Act, 1880.*

### ABSTRACT OF THE ENACTMENTS.

1. Married woman may effect policy of assurance for her separate use.
2. Policy of assurance may be effected in trust for wife and children.
3. Application and short title of Act.

An Act to extend to Scotland the Facilities for effecting Policies of Assurance for the Benefit of Married Women and Children now in force in England and Ireland.

(26th August 1880.)

WHEREAS by the Married Women's Property Act, 1870, increased facilities are given for effecting policies of assurance for the benefit of married women and children in England and Ireland :

And whereas it is expedient that such increased facilities for effecting policies of assurance for the benefit of married women and children should be extended to Scotland :

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. A married woman may effect a policy of assurance, on her own life or on the life of her husband, for her separate use; and the same and all benefit thereof, if expressed to be for her separate use, shall, immediately on being so effected, vest in her, and shall be payable to her, and her heirs, executors, and assignees, excluding the *jus mariti* and right of administration of her husband, and shall be assignable by her either *inter vivos* or *mortis causa* without consent of her husband; and the contract in such policy shall be as valid and effectual as if made with an unmarried woman.

2. A policy of assurance effected by any married man on his own life, and expressed upon the face of it to be for the benefit of his wife, or of his children, or of his wife and children, shall, together with all benefit thereof, be deemed a trust for the benefit of his wife for her separate use, or for the benefit of his children, or for the benefit of his wife and children; and such policy, immediately on its being so effected, shall vest in him and his legal representatives in trust for the purpose or purposes so expressed, or in any trustee nominated in the policy, or appointed by separate writing duly intimated to the assurance office, but in trust always as aforesaid, and shall not otherwise be subject to his control, or form part of his estate, or be liable to the diligence of his creditors, or be revocable as a donation, or reducible on any ground of excess or insolvency: And the receipt of such trustee for the sums secured by the policy, or for the value thereof, in whole or in part, shall be a sufficient and effectual discharge to the assurance office: Provided always, that if it shall be proved that the policy was effected and premiums thereon paid with intent to defraud creditors, or if the person upon whose life the policy is effected shall be made bankrupt within two years from the date of such policy, it shall be competent to the creditors to claim repayment of the premiums so paid from the trustee of the policy out of the proceeds thereof.

3. This Act shall apply only to Scotland, and may be cited as the Married Woman's Policies of Assurance (Scotland) Act, 1880.

## CHAP. 27.

### *Drainage and Improvement of Lands (Ireland) Act, 1880.*

#### ABSTRACT OF THE ENACTMENTS.

1. *Short title.*
2. *Additional powers to construct works outside the limits of a district.*
3. *Supplementary provisions.*

An Act to amend the Law relating to the powers of Drainage Boards in Ireland to construct Works outside the limits of their Districts.

(26th August 1880.)

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. This Act may be cited for all purposes as the Drainage and Improvement of Lands (Ireland) Act, 1880, and, together with the Drainage and Improvement of Lands Act (Ireland), 1863, and the Acts amending the same, may be cited as the Drainage and Improvement of Lands (Ireland) Acts, 1863 to 1880.

2. From and after the passing of this Act the powers vested in drainage boards constituted under the Drainage and Improvement of Lands

Act (Ireland), 1863, of executing works outside the limits of their respective districts under the provisions of the fifty-sixth section of the Act of the session of the fifth and sixth years of the reign of Her present Majesty, chapter eighty-nine, as incorporated with the said Drainage and Improvement of Lands Act (Ireland), 1863, shall be extended as follows; that is to say,

The works which any drainage board may execute outside the limits of their district shall be, besides the works mentioned in the said section, any other works which the Commissioners of Public Works in Ireland shall at any time, whether before or after the completion of the works within the district, certify to be, in their opinion, necessary for preventing injury to lands outside the limits of the district by reason of the drainage works executed or to be executed by the drainage board within the district: Provided that a drainage board in pursuance of the powers conferred by this Act—

- (1.) Shall not acquire any lands otherwise than by agreement; and
- (2.) Shall not execute any works within the limits of the district of any other drainage board without the consent of that board,

unless authorised by a Provisional Order made by the Commissioners of Public Works in Ireland, and confirmed by Parliament; and the said Commissioners may make such order in the like manner, and shall have for the purpose the like powers, as in the case of provisional orders under the Drainage and Improvement of Lands (Ireland) Act, 1863, and the provisions of that Act with respect to provisional orders and the purchase of lands shall, so far as is consistent with the tenour thereof, apply for the purpose of provisional orders and the purchase of lands under this Act.

3. The provisions contained in the Drainage and Improvement of Lands (Ireland) Act, 1863,

as amended by any Act or Acts, with respect to compensation to persons injuriously affected by the works executed by a drainage board, and with respect to the expenses of arbitration, and the costs and expenses of the Commissioners of Public Works, and with respect to the power of a drainage board to borrow money, and to loans or advances from the Commissioners of Public Works to a drainage board, and the security and repayment thereof, and with respect to the maintenance of such works, shall apply as if the works executed by a drainage board under this Act were works executed by the board within their district in accordance with the provisions of the Drainage and Improvement of Lands (Ireland) Act, 1863.

For the purpose of providing the said expenses of executing such works, and for compensation, and all other expenses incident thereto, the Commissioners of Public Works shall, upon the completion of such works, or whenever they think fit, from time to time, make an order declaring that the amount mentioned in such order shall be charged upon the lands in the district of the drainage board which executed the works, and the proprietors thereof respectively; and in such order the Commissioners shall declare the parties by whom and the respective proportions in which the amount mentioned in such order shall be paid, and, where any moneys have been lent by the Commissioners, the time or times of repayment to the Commissioners. In making such order, the Commissioners shall have regard to the final award under the Drainage and Improvement of Lands Act (Ireland), 1863, in the district for which such order shall be made; and the Commissioners may also insert in any such order all such other determinations, matters, and things as they may think necessary and proper.

Every such order made by the Commissioners under this Act shall have all the force and validity of a charging order made by them under the Drainage Maintenance Act, 1866.

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## CHAP. 28.

### *Census (Ireland) Act, 1880.*

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#### ABSTRACT OF THE ENACTMENTS.

1. *Interpretations of terms.*
2. *Account of population to be taken.*
3. *By whom the account shall be taken.*
4. *Masters, &c. of gaols, &c. to be appointed enumerators of the inmates thereof.*
5. *Forms, &c. to be furnished for their use.*
6. *Power to make the inquiry.*

7. *Penalty for refusing to answer, or for giving false answers.*
8. *Penalty on persons employed if guilty of wilful default or neglect.*
9. *Proceedings how to be taken, and penalties recovered and applied. Application of fines and penalties imposed.*
10. *The persons taking the accounts to certify and affirm as to their correctness, and deliver them to the officer appointed to receive them. Such officer to transmit them to the office of the Chief Secretary. An abstract thereof to be laid before Parliament.*
11. *Punishment of persons wilfully making false affirmation or declaration.*

An Act for taking the Census in Ireland.  
(26th August 1880.)

WHEREAS it is expedient to take the census of Ireland in the year one thousand eight hundred and eighty-one:

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. In this Act,—  
The term "Lord Lieutenant" shall mean the Lord Lieutenant or other chief governor or governors of Ireland:  
The terms "chief secretary" and "under secretary" shall mean respectively the chief secretary and under secretary to the Lord Lieutenant.
2. An account of the population of Ireland shall be taken at the time and in the manner herein-after directed.
3. Such officers and men of the police force of Dublin metropolis, and of the Royal Irish Constabulary, as the Lord Lieutenant shall direct, together with such other competent persons as the Lord Lieutenant shall appoint to assist therein, shall, upon Monday the fourth day of April and one or more next consecutive days in the year one thousand eight hundred and eighty-one as the said Lord Lieutenant shall fix, severally visit every house within such districts as may be assigned to them respectively, and take an account in writing, according to such instructions as may be given to them by the chief or under secretary of the number of persons who abode therein on the night of Sunday the third day of April one thousand eight hundred and eighty-one, and of the sex, age, religious profession, birthplace, and occupation of all such persons; and shall also take an account of the number of inhabited houses and of uninhabited houses and of houses then building within such districts respectively; and shall also distinguish those parishes and places, or parts of parishes and places, within each district respectively, which are within the limits of any city or borough returning a member or members to serve in Parliament; and shall also take an account of

all such further particulars as by such instructions they may be directed to inquire into; and all the expenses which shall be incurred by authority of such Lord Lieutenant under this Act, subject to the sanction of the Commissioners of Her Majesty's Treasury, shall be paid out of such moneys as shall be provided by Parliament for that purpose.

4. The governor, master, or keeper of every gaol, prison, or house of correction, workhouse, hospital, or lunatic asylum, and every barrack master, and every master or keeper of every public or charitable institution which shall be determined upon by the Lord Lieutenant, shall act as the enumerator of the inmates thereof, and shall be bound to conform to such instructions as shall be sent to him by the authority of the Lord Lieutenant for obtaining the returns required by this Act, so far as may be practicable with respect to such inmates.

5. For the more effectual obtaining of such accounts, the chief or under secretary shall prepare and cause to be printed such forms and instructions for the use of the several persons who shall be appointed as aforesaid to take or certify the said accounts as he shall deem necessary.

6. The better to enable such persons to take the said accounts, they are hereby authorised and empowered to ask all such questions of all persons within their respective districts, respecting themselves or the persons constituting their respective families, and of all such further particulars as shall be necessary for the purpose of taking the said accounts.

7. Every person refusing to answer or wilfully giving a false answer to any such questions, and every person in any way wilfully obstructing such persons in the execution of the duties required of them under this Act, shall for every such refusal, false answer, or wilful obstruction, on proof thereof being made before any justice or justices at petty sessions for the district in which such person shall reside, or, if such person shall reside within the police district of Dublin metropolis, before any of the divisional justices of such district, on the testimony of one or more

credible witnesses, forfeit a sum not exceeding five pounds, at the discretion of the said justice or justices before whom such complaint shall be so made: Provided always, that no person shall be subject to such forfeiture for refusing to state his religious profession.

8. Every member of the said police force or of the Royal Irish Constabulary, or other person, who shall be so appointed to take the said accounts, or to assist therein, who shall make any wilful neglect, default, or falsification in any matters relating to the said accounts, shall for every such neglect, default, or falsification, on proof thereof being made before any justice or justices at petty sessions for the district in which he shall so act, or in case such member of the police or constabulary force, or other person, shall act for the police district of Dublin metropolis, before any of the divisional justices of such district, on the testimony of one or more credible witnesses, forfeit a sum not exceeding five pounds nor less than forty shillings, at the discretion of the said justice or justices before whom such complaint shall be so made.

9. All proceedings under this Act, as to compelling the appearance of such member of the said police force or of the Royal Irish Constabulary force, or other person, or of any witness, and as to the hearing and determination of such complaints, or any other matter relating thereto, and as to the application of fines, amerciaments, and forfeited recognizances, imposed or levied under this Act at petty sessions, shall be subject in all respects to the provisions of the Petty Sessions (Ireland) Act, 1851, as the same is amended by the Petty Sessions Clerk (Ireland) Act, 1858, (when the case shall be heard in any petty sessions district,) and to the provisions of the Acts relating to the divisional police offices (when the case shall be heard in the police district of Dublin metropolis), so far as the said provisions shall be consistent with any special provisions of this Act; and when any fine or penalty is imposed at any of the divisional police offices of Dublin metropolis, under the provisions of this

Act, such fines and penalties shall be paid over to the same purposes and appropriated and applied in the same manner as is now by law authorised in respect of fines and penalties imposed at such divisional police offices respectively.

10. The said several persons so appointed to take the said accounts, or to assist therein, shall sign and certify the same, and make solemn affirmation before any justice of the peace within the county, to the effect that the said account has been truly and faithfully taken by him (or them), and that to the best of his (or their) knowledge the same is correct, so far as may be known, and shall deliver the same to such officer of the said police force, or of the Royal Irish Constabulary, or other person, as may be appointed by the Lord Lieutenant to receive the same, within each county, city, town, or place; and such officer or person shall examine the same, and cause any defect or inaccuracy which may be discovered therein to be supplied or corrected, so far as may be possible, and shall certify and transmit the same to the General Register Office, in such manner and within such time as the Lord Lieutenant shall direct, and the same shall be digested and reduced into order under the direction of the chief or under secretary, by the Registrar General of Births and Deaths in Ireland, and by such other person or persons as the Lord Lieutenant shall appoint for that purpose; and an abstract thereof shall be laid before both Houses of Parliament within twelve months after the day on which the said account shall be taken, or (if Parliament be not then sitting) within the first fourteen days of the session next ensuing.

11. Every solemn affirmation or declaration made or signed under the authority of this Act shall be of the same force and effect as if the person making such affirmation or declaration had taken an oath in the usual form, so that if the person making such affirmation or declaration shall be convicted of having therein wilfully and falsely affirmed or declared any matter or thing, he shall be subject to the same pains, penalties, and forfeitures, to which persons convicted of wilful perjury are subject.

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## CHAP. 29.

### *Courts of Justice Building Amendment Act, 1880.*

#### ABSTRACT OF THE ENACTMENTS.

1. *As to certificate by Lord Chancellor for payment of balance, &c. on transference of business.*
  2. *Vesting order.*
  3. *Short title.*
-

An Act to amend the Courts of Justice Building Act, 1865.

(26th August 1880.)

WHEREAS by the Courts of Justice Building Act, 1865, it was, among other things, provided that certain buildings erected on land formerly part of the gardens of the Honourable Society of Lincoln's Inn, under the authority of two statutes (local and personal) passed in the fifteenth year of the reign of King George the Third, chapters twenty-two and fifty-six, might, after they should have ceased to be used for the purposes authorised by the said Acts, be repurchased by the Society of Lincoln's Inn upon the terms therein mentioned, and that a certain court erected in Lincoln's Inn for the sittings of the Vice-Chancellor of England, under the authority of another Act (local and personal) passed in the fifty-sixth year of the reign of King George the Third, chapter eighty-four, should be discharged of the trusts declared by the said last-mentioned Act, and become the exclusive property of the said Society without any payment, and that the said Society should be repaid certain principal sums from time to time since the year one thousand eight hundred and forty expended out of their funds in the erection and fitting up of courts for the use of the judges of the Court of Chancery, and otherwise for the benefit of the said court; and that it should be lawful for the Lord Chancellor to settle an account with the said Society, and to order the balance of such account to be paid in the manner therein mentioned, and thereupon to make an order that the said land and buildings do vest in the trustees for the time being of the real estates of the said Society; but that this enactment should not take effect until after the Lord Chancellor should certify under his hand to the Treasury that the business conducted in the said buildings and courts, or any part thereof, had been transferred to the buildings authorised to be erected under the Courts of Justice Concentration (Site) Act, 1865, and such certificate should have been filed in the Report Office of the Court of Chancery; and that the option of repurchasing the said sites, and purchasing the said erections and buildings respectively, might be exercised by the said Society at any time within two years after notice to the treasurer of the said Society of the filing of such certificate:

And whereas the buildings erected under the said Acts of the fifteenth year of the reign of King George the Third have ceased to be required or used for any of the purposes authorised by the said Acts, but the courts mentioned in the

said Courts of Justice Building Act, 1865, are still required and used for the purposes therein mentioned:

And whereas it may be doubtful whether, under the said Courts of Justice Building Act, 1865, the certificate thereby required can be given by the Lord Chancellor until the whole of the business transacted in the buildings and courts therein mentioned has been transferred to the buildings authorised to be erected under the Courts of Justice Concentration (Site) Act, 1865, and it is expedient that such doubts should be removed:

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament, assembled and by the authority of the same, as follows:

1. It shall be lawful for the Lord Chancellor to give a separate certificate, pursuant to the Courts of Justice Building Act, 1865, as to each and every part of the buildings and courts therein mentioned from which the business conducted therein before the passing of that Act has been now or shall be from time to time transferred to the buildings authorised to be erected under the Courts of Justice Concentration (Site) Act, 1865; and the settlement of the account and the payment of the balance provided for by the said Courts of Justice Building Act, 1865, and the order to be made by the Lord Chancellor after such payment, shall be deferred until such certificates or certificate shall have been given as to the whole of such buildings and courts, unless the Lords Commissioners of Her Majesty's Treasury and the Honourable Society of Lincoln's Inn shall otherwise agree as to any part of the said buildings and courts, or of the accounts relating thereto, which they shall have power and are hereby authorised to do.

2. If the Lords Commissioners of Her Majesty's Treasury and the said Society of Lincoln's Inn shall so agree, the Lord Chancellor may from time to time make a separate vesting order as to any parts or part of the said buildings and courts which shall no longer be required for any of the purposes aforesaid; and every such vesting order shall, as to such parts or part of the said buildings and courts, have the same operation and effect as the vesting order provided for by the said Act would have had as to all the said buildings and courts.

3. This Act may be cited for all purposes as the Courts of Justice Building Amendment Act, 1880.

## CHAP. 30.

*Consolidated Fund (No. 2) Act, 1880 (Session 2).*

## ABSTRACT OF THE ENACTMENTS.

1. *Issue of 10,818,274l. out of the Consolidated Fund for the service of the year ending 31st March 1881.*
2. *Power to the Treasury to borrow.*
3. *Short title.*

An Act to apply the sum of Ten million eight hundred and eighteen thousand two hundred and seventy-four pounds out of the Consolidated Fund to the service of the year ending on the thirty-first day of March one thousand eight hundred and eighty-one.

(26th August 1880.)

Most Gracious Sovereign,

We, Your Majesty's most dutiful and loyal subjects, the Commons of the United Kingdom of Great Britain and Ireland, in Parliament assembled, towards making good the supply which we have cheerfully granted to Your Majesty in this session of Parliament, have resolved to grant unto Your Majesty the sum herein-after mentioned; and do therefore most humbly beseech Your Majesty that it may be enacted; and be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. The Commissioners of Her Majesty's Treas-

ury for the time being may issue out of the Consolidated Fund of the United Kingdom of Great Britain and Ireland, and apply towards making good the supply granted to Her Majesty for the service of the year ending on the thirty-first day of March one thousand eight hundred and eighty-one the sum of ten million eight hundred and eighteen thousand two hundred and seventy-four pounds.

2. The Commissioners of the Treasury may borrow from time to time on the credit of the said sum, any sum or sums not exceeding in the whole the sum of ten million eight hundred and eighteen thousand two hundred and seventy-four pounds, and shall repay the moneys so borrowed with interest not exceeding five pounds per centum per annum out of the growing produce of the Consolidated Fund at any period not later than the next succeeding quarter to that in which the said moneys were borrowed.

Any sums so borrowed shall be placed to the credit of the account of Her Majesty's Exchequer, and shall form part of the said Consolidated Fund, and be available in any manner in which such fund is available.

3. This Act may be cited as the Consolidated Fund (No. 2) Act, 1880 (Session 2).

## CHAP. 31.

*Railways Construction Amendment (Ireland) Act, 1880.*

## ABSTRACT OF THE ENACTMENTS.

1. *Short title.*
2. *Issue of certificate when Parliament is not sitting.*
3. *Issue of certificate when Parliament is sitting.*
4. *Advertisements of application.*
5. *Award of borrowing powers to railway companies.*
6. *Application of 27 & 28 Vict. c. 121.*
7. *Extent of Act.*
8. *Duration of Act.*

An Act to amend the Railways Construction Facilities Act, 1864.

(26th August 1880.)

WHEREAS by the Railways Construction Facilities Act it has been necessary for the Board of Trade to lay before both Houses of Parliament a draft of the certificate which it is empowered to grant in certain cases for the construction of railways :

And whereas it is desirable to facilitate the construction of certain railways in Ireland during the present and coming year :

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. This Act may be cited as the Railways Construction Amendment (Ireland) Act, 1880.

2. During the years one thousand eight hundred and eighty and one thousand eight hundred and eighty-one, the Board of Trade may, if Parliament is not sitting, when the Board has settled the draft certificate referred to in the Railways Construction Facilities Act, 1864, at once issue their certificate for any Irish railways now scheduled in the Relief of Distress (Ireland) Amendment Act, 1880, and it shall not be necessary to refer to either House of Parliament or to lay a draft of such certificate before either House of Parliament.

3. If Parliament is sitting when the draft certificate is settled by the Board of Trade, such draft certificate shall be laid before both Houses of Parliament for two weeks instead of six weeks as specified in section sixteen of the Railways

Construction Facilities Act, 1864, and if neither House of Parliament within the period of two weeks thinks fit to resolve that the certificate ought not to be made, then as soon as the period of two weeks after the laying of the draft certificate before both Houses of Parliament has expired, the Board of Trade may make and issue a certificate in conformity with such draft.

4. Notwithstanding anything to the contrary in the Railways Construction Facilities Act, 1864, and the regulations scheduled thereto, the advertisements of the application may be made at any time, and may state that objections or representations must be made within twenty-one days from the date of such advertisement, and any objection or representation not made within such period of twenty-one days shall be deemed not to have been made within the period limited by the said Act.

5. The Board of Trade may, if they think fit, in their certificate, award for any railway scheduled in the schedule of the Relief of Distress (Ireland) Amendment Act, 1880, borrowing powers not exceeding one half of the amount of the share capital authorised by the certificate.

6. All the provisions of the Railways Construction Facilities Act, 1864, shall apply to the making and effect of every such certificate, except when inconsistent with the provisions of this Act.

7. This Act shall extend to Ireland only.

8. This Act shall expire on the thirty-first day of December one thousand eight hundred and eighty-one, except as regards any application pending at that date.

CHAP. 32.

*Bastardy Orders Act, 1880.*

ABSTRACT OF THE ENACTMENTS.

1. *Confirmation of orders.*
2. *Short title.*

An Act to render valid certain Orders in Bastardy. (26th August 1880.)

WHEREAS by the Bastardy Laws Amendment Act, 1873, it was enacted that the Local Government Board might issue such new or altered forms of proceedings in matters of bastardy as they

should deem necessary or expedient for giving effect to the provisions of that Act and the Bastardy Laws Amendment Act, 1872; and the said Board issued certain forms accordingly :

And whereas many orders in bastardy have been made which are not in accordance with the forms so issued, or to the like tenor or effect, and

in particular the words "for the maintenance and education of the said child" have been omitted from the said orders, and questions have in consequence arisen as to the validity of the same :

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. An order so made as aforesaid before the passing of this Act shall not be, or be deemed to be, invalid by reason of the omission from such order of the words "for the maintenance and education of the said child," or words to the like tenor or effect.

2. This Act may be cited as the Bastardy Orders Act, 1880.

### CHAP. 33.

#### *Post Office (Money Orders) Act, 1880.*

##### ABSTRACT OF THE ENACTMENTS.

1. *Power to the Postmaster General to issue money orders in form in schedule for the purpose of the transmission of small sums.*
2. *Application of 11 & 12 Vict. c. 88., and laying of regulations before Parliament.*
3. *Forgery of crossing of order.*
4. *Fraud and forgery.*
5. *Definitions.*
6. *Extension of Acts to Channel Islands and Isle of Man.*
7. *Short title and construction.*

##### SCHEDULE.

#### An Act relating to Post Office Money Orders. (7th September 1880.)

WHEREAS by the Post Office Duties Act, 1840, and the Post Office Money Order Act, 1848, provision is made for the transmission of small sums of money through the Post Office by means of money orders under regulations made by Her Majesty's Postmaster General for the time being (in this Act referred to as the Postmaster General) with the concurrence of the Commissioners of Her Majesty's Treasury (in this Act referred to as the Treasury), and it is expedient to make further provision with respect to such transmission :

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. Subject to the Post Office regulations as defined by this Act, the Postmaster General, with the consent of the Treasury, may, for the purpose of the transmission of small sums through the Post Office, authorise his officers or any of them to issue, in addition to the money orders already authorised by law, orders in the form set forth in the schedule to this Act, and such orders shall be paid in the manner and subject to the conditions prescribed by the said regulations, and shall be deemed to be money orders within the meaning of the said regulations, and shall, like other money orders, be exempt from stamp duty.

Provided that—

- (1.) Any such order shall be for one of the amounts following; and in respect thereof the following poundage shall be taken for the use of Her Majesty; that is to say,

Amount.	Poundage.
One shilling - - - - -	One halfpenny.
One shilling and sixpence - - - - -	One halfpenny.
Half-a-crown - - - - -	One penny.
Five shillings - - - - -	One penny.
Seven shillings and sixpence - - - - -	One penny.
Ten shillings - - - - -	Twopence.
Twelve shillings and sixpence - - - - -	Twopence.
Fifteen shillings - - - - -	Twopence.
Seventeen shillings and sixpence - - - - -	Twopence.
Twenty shillings - - - - -	Twopence.

- (2.) Any such order shall not be issued until the amount of the order and the poundage have been paid to the officer issuing the same :
- (3.) After the expiration of three months from the last day of the month in which any such order is issued by the Post Office, the order shall be payable only on payment in the prescribed manner of a commission equal to the amount of the original poundage, with the addition (if more than three months have elapsed since the said expiration) of the amount of the original poundage for every further period of three months which has so elapsed, and for every portion of any such period of three months over and above every complete period :
- (4.) No interest shall be payable in respect of an order issued under this Act.

2. Subject to any Post Office regulations, the Post Office Money Order Act, 1848, shall apply as well to orders issued under this Act as to all other money orders issued in pursuance of the said Act of 1848, with this addition, that all Post Office regulations in relation to orders issued under this Act shall be published in the London Gazette, and shall be laid before both Houses of Parliament within fourteen days after they are made if Parliament be then in session, and if not, within fourteen days after the commencement of the then next session of Parliament.

3. Any person who, with intent to defraud, obliterates, adds to, or alters any such lines or words on an order issued under this Act as would, in the case of a cheque, be a crossing of that cheque, or knowingly offers, utters, or disposes of any order, with such fraudulent obliteration, addition, or alteration, shall be guilty of felony, and be liable to the like punishment as if such order were a cheque : Provided always, that any banker or corporation or company acting as bankers in the United Kingdom who, in collecting in such capacity for any principal, shall have received payment or been allowed by the Postmaster General in account in respect of any money order issued under this Act, or of any document purporting to be such a money order, shall not incur liability to anyone except such principal by reason of having received such payment or allowance, or having held or presented such order or document for payment ; but this section shall not relieve any principal for whom such order or document shall have been so held or presented of any liability in respect of his possession of the same or of the proceeds thereof.

4. (1.) The enactments providing for the

punishment of offences relating to stamp duties shall apply in like manner as if the poundage under this Act were a stamp duty.

(2.) Sections nineteen, twenty-two, twenty-three, twenty-six, twenty-nine, and thirty of the Post Office Duties Act, 1840, (which relate to dies and paper, and to plates and instruments, and to moulds, frames, instruments, and machinery for the making of paper, and to the punishing of fraud,) shall apply as if herein re-enacted, with the substitution of poundage under this Act for the duties therein mentioned, and of orders under this Act for the envelopes therein mentioned.

(3.) An officer of the Post Office who re-issues an order previously paid shall be deemed to have issued the order with a fraudulent intent within the meaning of section four of the Post Office (Money Orders) Act, 1848, and shall be punished accordingly, and that section as amended by this Act shall extend to an offence when committed in the Channel Islands or the Isle of Man in like manner as if they were mentioned in that section after Ireland, and penal servitude were substituted for transportation.

(4.) An order under this Act shall be deemed to be an order for the payment of money and a valuable security within the meaning of the Post Office Acts and of the Forgery Act, 1861, (that is to say, the Act of the twenty-fourth and twenty-fifth years of the reign of Her present Majesty, chapter ninety-eight,) and of section one of the Larceny Act, 1861, and of any other law relating to forgery or stealing, which is for the time being in force in any part of the United Kingdom, the Channel Islands, or Isle of Man.

5. For the purposes of this Act, unless the context otherwise requires—

The expression "Post Office regulations" means regulations or restrictions from time to time made in pursuance of the Post Office (Money Orders) Act, 1848, as amended by this Act :

The expression "prescribed" means prescribed by the Post Office regulations for the time being in force.

6. The Post Office (Money Orders) Acts, 1848 and 1880, shall extend to the Channel Islands and the Isle of Man, and the Royal Courts of the Channel Islands shall register the same accordingly.

7. This Act may be cited as the Post Office (Money Orders) Act, 1880.

The Act of the session of the eleventh and twelfth years of the reign of Her present Majesty, chapter eighty-eight, intitled "An Act for further regulating the Money Order Department of the Post Office," is in this Act

referred to and may be cited as the Post Office (Money Orders) Act, 1848, and the (Money Orders) Act, 1848.

This Act shall be construed as one with the Post Office (Money Orders) Acts, 1848 and 1880.

—o—o—o—  
SCHEDULE.

FORM OF ORDER.

Postal Order for \*[Five Shillings].

[Name of Issuing Office.]  
[Number of Order.]

\* Alter  
according to  
amount.



To the Postmaster in charge of the Money Order Office  
at † Pay to † at  
any time within three calendar months from the last day of the  
month of issue the sum of \*[five shillings] on account of Her  
Majesty's Postmaster General.

Issuing Office  
Stamp,  
with date.

Postmaster.

† The person to whom this Order is issued must, before parting with it, fill in the name of the person to whom the amount is to be paid, and may fill in the name of the Money Order Office at which the amount is to be paid.

The person so named must sign the receipt at the foot hereof, and must also fill in the name of the Money Order Office, if that has not been already done.

1. If this order be crossed "\_\_\_\_\_ & Co." payment will only be made through a banker, and if the name of a banker is added payment will only be made through that banker.
2. After this order has once been paid, to whomsoever it is paid, the Postmaster General will not be liable for any further claim.
3. If any erasure or alteration be made, or if this order is cut, defaced, or mutilated, payment may be refused.
4. The regulations under which this order is issued allow the postmaster to refuse or delay the payment of this order, but he must at once report his reasons for so doing to the Postmaster General.
5. After the expiration of three months from the last day of the month of issue this Order will be payable only on payment of a commission equal to the amount of the original poundage, with the addition (if more than three months have elapsed since the said expiration) of the amount of the original poundage for every further period of three months which has so elapsed, and for every portion of any such period of three months over and above every complete period.

Paying Office  
Stamp,  
with date.

Cancelling this  
Order.

Received the above-named sum.

\_\_\_\_\_  
Signature.

## CHAP. 34.

*Debtors (Scotland) Act, 1880.*

## ABSTRACT OF THE ENACTMENTS.

1. *Short title.*
2. *Extent of Act.*
3. *Commencement of Act.*

*Abolition of Imprisonment for Debt.*

4. *Abolition of imprisonment for debt, with certain exceptions.*
5. *Discharge of persons in custody at the commencement of this Act.*

*Notour Bankruptcy.*

6. *New mode of constituting notour bankruptcy.*

*Cessio bonorum.*

7. *Debtor, who is notour bankrupt, may apply for cessio.*
8. *Cessio at instance of creditor.*
9. *Procedure in cessio at instance of creditor.*

*Miscellaneous.*

10. *Periodical report by governor as to civil prisoners. Sheriff's powers thereon.*
11. *No court fees, stamp duties, or Government payments exigible.*
12. *Bank notes, money, &c. in possession of a bankrupt may be seized under warrant from sheriff.*

*Punishment of Fraudulent Debtors.*

13. *Punishment of fraudulent debtors in certain specified cases.*
14. *False claim, &c. a crime and offence.*
15. *Power to give information to Lord Advocate.*
16. *As to punishments under this Act for offences punishable otherwise.*

## SCHEDULE.

An Act to abolish Imprisonment for Debt, and to provide for the better Punishment of Fraudulent Debtors in Scotland; and for other purposes.  
(7th September 1880.)

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited for all purposes as the Debtors (Scotland) Act, 1880.

2. This Act shall extend to Scotland only.

3. This Act shall come into operation on the first day of January one thousand eight hundred and eighty-one, which day is herein-after referred to as the commencement of this Act.

*Abolition of Imprisonment for Debt.*

4. With the exceptions herein-after mentioned, no person shall, after the commencement of this Act, be apprehended or imprisoned on account of any civil debt.

There shall be excepted from the operation of the above enactment,—

1. Taxes, fines, or penalties due to Her Majesty, and rates and assessments lawfully imposed or to be imposed.

2. Sums decreed for aliment:

Provided that no person shall be imprisoned in any case excepted from the operation of this section for a longer period than twelve months.

Nothing contained in this Act shall affect or prevent the apprehension or imprisonment of any person under a warrant granted against him as being in *meditatione fugæ*, or under any decree or obligation *ad factum præstandum*.

5. Where any person is, at the commencement of this Act, in custody under a warrant of im-

prisonment, or other process in any case in which he would not be liable to be apprehended or imprisoned after the commencement of this Act, such person shall, at the commencement of this Act, be discharged from such custody; but his apprehension, imprisonment, or discharge shall not affect the other rights or remedies of any creditor for enforcing the payment of any money due to him.

#### *Notour Bankruptcy.*

6. In any case in which, under the provisions of this Act, imprisonment is rendered incompetent, notour bankruptcy shall be constituted by insolvency concurring with a duly executed charge for payment followed by the expiry of the days of charge without payment, or where a charge is not necessary or not competent, by insolvency concurring with an extracted decree for payment followed by the lapse of the days intervening prior to execution without payment having been made.

Nothing in this section contained shall affect the provisions of section seven of the Bankruptcy (Scotland) Act, 1856.

#### *Cessio bonorum.*

7. Any debtor who is notour bankrupt within the meaning of the Bankruptcy (Scotland) Act, 1856, or of this Act, may present a petition for decree of cessio bonorum, in the same manner and subject to the same provisions and conditions, as nearly as may be, in and subject to which a person now entitled to apply for decree of cessio bonorum may do so under the Acts of Parliament enumerated in the schedule hereto annexed, herein-after called the Cessio Acts; and the provisions of the Cessio Acts shall apply, as nearly as may be, to such petition and the procedure thereunder, subject to the provisions herein-after contained.

8. Any creditor of a debtor who is notour bankrupt within the meaning of the Bankruptcy (Scotland) Act, 1856, or of this Act, may present a petition to the sheriff of the county in which such debtor has his ordinary domicile, setting forth that he (the debtor) is unable to pay his debts, and praying that he may be decreed to execute a disposition omnium bonorum for behoof of his creditors, and that a trustee be appointed who shall take the management and disposal of his estate for such behoof, and such process shall be taken and deemed to be a process of cessio. In the petition there shall be inserted a list of all the creditors of the debtor, specifying their names, designations, and places of residence, so far as known to the petitioner, and with the petition shall be produced evidence that the debtor is notour bankrupt.

9. On such petition being presented the following provisions shall have effect:

1. The sheriff, if he is satisfied that there is prima facie evidence of notour bankruptcy, shall issue a warrant appointing the petitioner to publish a notice in the "Edinburgh Gazette," intimating that such petition has been presented, and requiring all the creditors to appear in court on a certain day, being not less than thirty days from the date of the "Gazette" notice, the petitioner being bound, within five days after the date of such notice, to send letters to all the creditors specified in the petition, containing a copy of the said notice, and the sheriff shall further ordain the debtor to appear on the day so appointed for the comparance of the creditors in the presence of the sheriff for public examination; and the debtor shall, on or before the sixth lawful day prior to the day so appointed, lodge, to be patent to all concerned, a state of his affairs subscribed by himself, and all his books, papers, and documents relating to his affairs, in the hands of the sheriff clerk; and the petitioner shall, on or before the same date, lodge in the hands of the sheriff clerk a copy of the said "Gazette," and a certificate subscribed by his agent, or by a messenger-at-arms, or sheriff officer, and a witness, stating the date and the place where the letters to the creditors were put into the post office, and that they were severally addressed as specified in the petition.
2. On the day appointed for the comparance of the creditors the debtor shall appear in public court in presence of the sheriff for examination as to his affairs, and the sheriff shall have power to put him on oath or affirmation, as the case may be, and the debtor shall be bound to answer all pertinent questions put to him by the sheriff, or by any creditor with the approbation of the sheriff, and it shall be competent for the sheriff to adjourn the examination for such time as to him shall appear fit and reasonable; and the provisions of section ninety-three of the Bankruptcy (Scotland) Act, 1856, shall, as nearly as may be, apply to the examination of debtors, and the production of books, deeds, or other documents by them, under this Act.
3. The sheriff shall, on such examination being taken, allow a proof to the parties, if it shall appear necessary, and hear parties viva voce, and either grant decree decerning the debtor to execute a disposition

omnium bonorum to a trustee for behoof of his creditors, or refuse the same in hoc statu, or make such other order as the justice of the case requires. The trustee shall be nominated by the sheriff on the suggestion of the creditors represented at the meeting for examination, and if they do not agree on a person, the sheriff shall make his own selection.

4. Any judgment or interlocutor, or decree, pronounced in such petition may be reviewed on appeal in the same form and subject to the like provisions, restrictions, and conditions as are by law provided in regard to appeals against any judgment or interlocutor, or decree, pronounced in any other process of cessio bonorum.
5. Until the debtor shall execute a disposition omnium bonorum for behoof of his creditors, any decree decerning him to do so shall operate as an assignation of his moveables in favour of any trustee mentioned in the decree for behoof of such creditors.
6. The expense of obtaining the decree and of the disposition omnium bonorum shall be paid out of the readiest of the funds thereby conveyed.

#### *Miscellaneous.*

10. At least once in every four weeks it shall be the duty of the governor or principal officer in charge of every prison in Scotland to make a report to the sheriff of the county, within which such prison is situated, setting forth the name and designation of every civil prisoner detained in such prison, the ground of and warrant for his imprisonment, and the period for which he has been so detained; and it shall be lawful for the sheriff to direct any civil prisoner to be brought before him, and, if he shall think fit, the sheriff may determine that the assistance of one of the procurators for the poor shall be afforded to such prisoner in raising a process of cessio bonorum.

11. No fee fund or other dues of court shall be exigible in respect of any proceedings under the Cessio Acts or this Act; nor shall any stamp duty or other Government duty be exigible, in respect of any disposition which the debtor shall be required or decerned to execute in terms thereof, any law or statute to the contrary notwithstanding.

12. The sheriff shall have power, upon cause shown by any creditor, or without any application if he shall think fit, at any time after the presentation of a petition for sequestration

under the Bankruptcy Act, 1856, or for cessio, to grant warrant to take possession of and put under safe custody any bank notes, money, bonds, bills, cheques, or drafts, or other moveable property belonging to or in the possession of the debtor; and, if necessary for that purpose, to open lockfast places, and to search the dwelling-house and person of the debtor.

#### *Punishment of Fraudulent Debtors.*

13. The debtor in a process of sequestration or cessio shall be deemed guilty of a crime and offence, and on conviction before the court of justiciary, or before the Sheriff and a jury, shall be liable to be imprisoned for any time not exceeding two years, or by the Sheriff without a jury for any time not exceeding sixty days, with or without hard labour:

(A.) In each of the cases following unless he proves to the satisfaction of the court that he had no intent to defraud; that is to say,

1. If he does not, to the best of his knowledge and belief, fully and truly disclose the state of his affairs in terms of the Bankruptcy (Scotland) Act, 1856, or the Cessio Acts, as the case may be:

2. If he does not deliver up to the trustees all his property, and all books, documents, papers, and writings relating to his property or affairs which are in his custody or under his control, and which he is required by law to deliver up, or if he does not deal with and dispose of the same according to the directions of the trustees:

3. If after the presentation of the petition for sequestration or cessio, or within four months next before such presentation he conceals any part of his property, or conceals, destroys, or mutilates, or is privy to the concealment, destruction, or mutilation of any book, document, paper, or writing relating to his property or affairs:

4. If after, or within the time above specified, he makes or is privy to the making of any false entry in, or otherwise falsifying any book, document, paper, or writing affecting or relating to his property or affairs:

5. If within four months next before the presentation of the petition for sequestration or cessio he pawns, pledges, or disposes of, otherwise than in the ordinary way of trade, any property which he has obtained on credit and has not paid for:

6. If, being indebted to an amount exceeding two hundred pounds at the date of the presentation of the petition for sequestration or cessio, as the case may be, he has not, for three years next before such date, kept such books or accounts as, according to the usual course of any trade or business in which he may have been engaged, are necessary to exhibit or explain his transactions :

(B.) In each of the cases following :

1. If, knowing or believing that a false claim has been made by any person under the sequestration, he fails for the period of a month from the time of his acquiring such knowledge or belief to inform the trustee thereof :

2. If after the presentation of the petition for sequestration or cessio, or at any meeting of his creditors within four months next before such presentation, he attempts to account for any part of his property by fictitious losses or expenses :

3. If within four months next before the presentation of the petition for sequestration or cessio he, by any false representation or other fraud, has obtained any property on credit and has not paid for the same :

4. If, after the date of granting sequestration or cessio, or within four months prior thereto, he absconds from Scotland, or makes preparations to abscond for the purpose of avoiding examination or other proceedings at the instance of his creditors, or taking with him property which ought by law to be divided amongst his creditors to the amount of twenty

pounds or upwards, or if he fails, having no reasonable excuse (after receiving due notice), to attend the public examination appointed by the lord ordinary or the sheriff, or to submit himself for examination in terms of the statutes :

5. If, being insolvent, and with intent to defraud his creditors, or any of them, he makes or causes to be made any gift, delivery, or transfer of or any charge on or affecting his property.

14. If any creditor under any petition for sequestration or cessio, or disposition omnium bonorum, wilfully and with intent to [defraud, makes any false claim, or makes or tenders any proof, affidavit, declaration, or statement of account which is untrue in any material particular, he shall be deemed guilty of a crime and offence, and on conviction thereof shall be liable to be imprisoned for any time not exceeding one year, with or without hard labour.

15. It shall be the duty of the trustee in any process of sequestration or cessio to report all offences under this Act to the presiding judge, who shall, on such representation or of his own motion, direct information in all such cases as he thinks ought to be prosecuted, to be laid before the Lord Advocate, who shall direct such inquiry and take such proceedings as he shall think fit.

16. Where any person is liable under any other Act of Parliament or at common law to any punishment or penalty for any offence made punishable by this Act, such person may be proceeded against under such other Act of Parliament or at common law or under this Act, so that he be not punished twice for the same offence.

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#### SCHEDULE.

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6 & 7 Will 4. c. 56.  
39 & 40 Vict. c. 70. s. 26.

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## CHAP. 35.

*Wild Birds Protection Act, 1880.*

## ABSTRACT OF THE ENACTMENTS.

1. *Short title.*
2. *Definition of terms.*
3. *Penalties for shooting or taking wild birds.*
4. *Penalty for refusing to give name and place of abode.*
5. *Prosecution of offences.*
6. *As to trial of offences committed within the Admiralty jurisdiction.*
7. *Commencement of Act. Repeal of Acts.*
8. *Extension or variation of close time.*
9. *Extent of Act.*

An Act to amend the Laws relating to  
the Protection of Wild Birds.

(7th September 1880.)

WHEREAS it is expedient to provide for the protection of wild birds of the United Kingdom during the breeding season :

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. This Act may for all purposes be cited as the Wild Birds Protection Act, 1880.

2. The words "wild birds" shall for all the purposes of this Act be deemed to mean all wild birds. The word "sheriff" shall include steward and also sheriff substitute and steward substitute.

3. Any person who between the first day of March and the first day of August in any year after the passing of this Act shall knowingly and wilfully shoot, or attempt to shoot, or shall use any boat for the purpose of shooting or causing to be shot, any wild bird, or shall use any lime, trap, snare, net, or other instrument for the purpose of taking any wild bird, or shall expose or offer for sale, or shall have in his control or possession after the fifteenth day of March, any wild bird recently killed or taken, shall, on conviction of any such offence before any two justices of the peace in England and Wales or Ireland, or before the sheriff in Scotland, in the case of any wild bird which is included in the schedule hereunto annexed, forfeit and pay for every such bird in respect of which an offence has been committed a sum not exceeding one pound, and, in the case of any other wild bird, shall for a first offence be reprimanded and discharged on payment of costs, and for every subsequent offence forfeit and pay for every such wild bird in respect of which an offence is committed a sum of money not exceeding five shil-

lings, in addition to the costs, unless such person shall prove that the said wild bird was either killed or taken or bought or received during the period in which such wild bird could be legally killed or taken, or from some person residing out of the United Kingdom. This section shall not apply to the owner or occupier of any land, or to any person authorised by the owner or occupier of any land, killing or taking any wild bird on such land not included in the schedule hereto annexed.

4. Where any person shall be found offending against this Act, it shall be lawful for any person to require the person so offending to give his Christian name, surname, and place of abode, and in case the person so offending shall, after being so required, refuse to give his real name or place of abode, or give an untrue name or place of abode, he shall be liable on being convicted of any such offence to forfeit and pay, in addition to the penalties imposed by section three, such sum of money not exceeding ten shillings sterling as to the justices or sheriff shall seem meet.

5. All offences under this Act may be prosecuted, and penalties and forfeitures under this Act recovered,—

- (1.) In England in manner provided by the Summary Jurisdiction (England) Acts; and
- (2.) In Scotland before the sheriff in manner provided by the Summary Procedure Act, 1864, and any Acts amending the same; and
- (3.) In Ireland within the police district of Dublin metropolis, in manner provided by the Acts regulating the powers and duties of justices of the peace for such district or of the police of such district, and elsewhere in Ireland before two justices in manner provided by the Petty Sessions (Ireland) Act, 1851, and any Act amending the same.

6. All offences mentioned in this Act which shall be committed within the jurisdiction of the Admiralty shall be deemed to be offences of the same nature and liable to the same punishments as if they had been committed upon any land in the United Kingdom, and may be dealt with, inquired of, tried, and determined in any county or place in the United Kingdom in which the offender shall be apprehended or be in custody or be summoned, in the same manner in all respects as if such offences had been actually committed in that county or place; and in any information or conviction for any such offence the offence may be averred to have been committed "on the high seas." And in Scotland any offence committed against this Act on the sea coast or at sea beyond the ordinary jurisdiction of any sheriff, justice or justices of the peace, shall be held to have been committed in any county abutting on such sea coast or adjoining such sea, and may be tried and punished accordingly.

Where any offence under this Act is committed in or upon any waters forming the boundary between any two counties, districts of quarter sessions, or petty sessions, such offence may be prosecuted before any justices of the peace or sheriff in either of such counties or districts.

7. This Act shall come into operation on the first day of January one thousand eight hundred and eighty-one, and on the same day the Act passed in the session of Parliament holden in the thirty-second and thirty-third years of the reign of Her present Majesty, entitled "An Act for the preservation of Sea Birds," and the Act passed in the session of Parliament holden in the thirty-fifth and thirty-sixth years of the reign of Her present Majesty, entitled "An Act for the protection of

"certain wild birds during the breeding season," and the Act passed in the session of Parliament holden in the thirty-ninth and fortieth years of the reign of Her present Majesty, entitled "An Act for the preservation of Wild Fowl," shall be repealed.

8. One of Her Majesty's Principal Secretaries of State as to Great Britain, and the Lord Lieutenant as to Ireland, may, upon application of the justices in quarter sessions assembled of any county, by order extend or vary the time during which the killing and taking of wild birds or any of them is prohibited by this Act; after the making of which order the penalties imposed by this Act in respect of such wild birds shall in such county apply only to offences committed during the time specified in such order; and the order for the extension or variation of such time shall be published, if made by the Secretary of State, in the London Gazette, or if made by the Lord Lieutenant, in the Dublin Gazette, and a copy of the London Gazette or Dublin Gazette containing any order made under this Act shall be evidence of the same having been made.

9. The operation of this Act shall not extend to the Island of Saint Kilda, and it shall be lawful for one of Her Majesty's Principal Secretaries of State as to Great Britain, and for the Lord Lieutenant as to Ireland, where it shall appear desirable, from time to time, upon the application of the justices in quarter sessions assembled in any county to exempt any such county or part or parts thereof, as to all or any wild birds, from the operation of this Act; and every such order shall be published and may be proved in the manner provided in the preceding section.

#### SCHEDULE.

American quail.	Grebe.	Petrel.	Skua.
Auk.	Greenshank.	Phalarope.	Smew.
Avocet.	Guillemot.	Plover.	Snipe.
Bee-eater.	Gull (except Black-backed gull).	Ploverspage.	Solan goose.
Bittern.	Hoopoe.	Pochard.	Spoonbill.
Bonxie.	Kingfisher.	Puffin.	Stint.
Colin.	Kittiwake.	Purre.	Stone curlew.
Cornish chough.	Lapwing.	Razorbill.	Stonehatch.
Coulterneb.	Loon.	Redshank.	Summer snipe.
Cuckoo.	Mallard.	Reeve or Ruff.	Tarrock.
Curlew.	Marrot.	Roller.	Teal.
Diver.	Merganser.	Sanderling.	Tern.
Dotterel.	Murre.	Sandpiper.	Thickknee.
Dunbird.	Night-hawk.	Scout.	Tystey.
Dunlin.	Night-jar.	Sealark.	Whaup.
Eider duck.	Nightingale.	Seamew.	Whimbrel.
Fern-owl.	Oriole.	Sea parrot.	Widgeon.
Fulmar.	Owl.	Sea swallow.	Wild duck.
Gannet.	Ox bird.	Shearwater.	Willock.
Goatsucker.	Oyster catcher.	Sheldrake.	Woodcock.
Godwit.	Pewit.	Shoveller.	Woodpecker.
Goldfinch.			

## CHAP. 36.

*Savings Banks Act, 1880.*

## ABSTRACT OF THE ENACTMENTS.

1. *Repayment by terminable annuity of deficit on trustee savings bank account.*
2. *Reduction of rate of interest in the case of trustee savings banks.*
3. *Investment of deposits in savings banks in Government stock.*
4. *Regulations as to investment in Government stock.*
5. *Definitions.*
6. *Amendment of 26 & 27 Vict. c. 87. s. 29, as to the separate surplus fund of trustee savings banks.*
7. *Commencement of Act.*
8. *Short title.*

## SCHEDULE.

An Act to amend the Savings Banks Acts.  
(7th September 1880.)

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. Whereas in pursuance of the Savings Bank Investment Act, 1863, the National Debt Commissioners annually prepare a balance sheet showing the assets and liabilities of the Commissioners in respect of trustee savings banks on the previous twentieth day of November, and the said balance sheet has annually shown a deficiency of the said assets to meet the liabilities, and such deficiency has in pursuance of the said Act been declared by the Treasury to be a charge on the Consolidated Fund of the United Kingdom :

And whereas in the said balance sheet the securities forming part of the assets have in pursuance of the said Act been valued at the price which the like securities bore on the said day in the public market, and by reason of the adoption of that mode of valuation and the variation in the price of securities the deficiency has in some years appeared to have diminished, whereas if the securities had in every year been valued at the same price such diminution would not have appeared :

And whereas in pursuance of section seventeen of the Customs, Inland Revenue, and Savings Banks Act, 1877, the National Debt Commissioners annually make out an account with respect to the year ending on the previous twentieth day of November, showing on the one side the interest accrued on the above-mentioned assets, and showing on the other side the interest paid and credited to the trustees of trustee savings banks, and the interest accrued is annually insufficient to meet the interest paid and credited, and such deficiency has been paid out of moneys provided by Parliament :

And whereas it is expedient to make further

provision respecting the above-mentioned balance sheet and deficiencies : Be it therefore enacted as follows :

(1.) In every balance sheet of the assets and liabilities of the National Debt Commissioners in respect of trustee savings banks prepared after the passing of this Act in pursuance of the Savings Bank Investment Act, 1863, the assets besides being valued in manner directed by the said Act shall also be valued as follows ; that is to say,

The Government stock shall be valued at such sum as would, if invested to yield three and a quarter per centum per annum, produce the same income as the said stock ;

The terminable annuities shall be valued at the total amount of the future payments after deducting discount at the rate of three and a quarter per centum per annum ; and

The residue of the assets shall be valued at par.

The sum by which the assets, valued as directed by this Act, in the balance sheet prepared for the year ending on the twentieth day of November one thousand eight hundred and eighty are insufficient to meet the liabilities of the National Debt Commissioners in respect of trustee savings banks on that day is in this Act referred to as the capital deficiency. There shall be added to the said capital deficiency the sum (if any) by which during the year ending on the last-mentioned day the interest accrued from the assets of the National Debt Commissioners in respect of trustee savings banks was insufficient to meet the interest paid and credited to the trustees of the trustee savings banks.

For the purpose of paying to the National Debt Commissioners the total deficiency so ascertained, the Treasury shall, by warrant under their hands, create and direct the Governor and Company of the Bank of England to inscribe in their books for the National Debt Commissioners on the trustee savings banks account a terminable annuity for such number of years, not exceeding twenty-eight, computed from the first

day of April one thousand eight hundred and eighty-one, as the Treasury think expedient, of such an amount as will pay off the said total deficiency if the interest is calculated at the rate of three and a quarter per centum per annum.

The said annuity shall be charged upon the Consolidated Fund, and shall be added to and paid out of the permanent annual charge for the National Debt, and the permanent annual charge for the National Debt shall, during the period for which the said annuity is created, be increased by the amount of the annuity.

Sections four, five, six, and seven of the Savings Bank Investment Act, 1869, shall apply to such terminable annuity in like manner as they apply to the terminable annuities created in pursuance of that Act for the National Debt Commissioners on account of savings banks.

2. After the twentieth day of November one thousand eight hundred and eighty, all receipts issued either before or after that day to the trustees of trustee savings banks by the National Debt Commissioners, in respect of money paid into the Banks of England or Ireland by such trustees, shall carry interest at the rate of three per centum per annum, and the Trustee Savings Banks Act, 1863, shall be construed as if three pounds were throughout section twenty-one of that Act substituted for three pounds five shillings.

From and after the same day, the interest payable to depositors by the trustees of any trustee savings bank shall not exceed the rate of two pounds fifteen shillings per centum per annum.

3.—(1.) Subject to the regulations under this Act, any deposit in a trustee or Post Office savings bank, or any part of such deposit, may on the request of the depositor be invested by the savings bank authority in any Government stock; provided that—

(a.) The sum invested shall not be less than ten pounds, or the amount of the current price of ten pounds stock with the addition of the commission, whichever sum is least:

(b.) The amount of stock credited to any one account in any savings bank year (whether any stock has been previously sold or not) shall not exceed one hundred pounds stock:

(c.) The whole amount of stock credited to any one account shall not exceed three hundred pounds stock.

(2.) Subject to the regulations under this Act, the depositor may request the savings bank authority to sell the stock standing to his account, or any part of such stock, not less than ten pounds stock, or than stock of the value of ten

pounds over and above the commission, whichever is least.

(3.) Upon request from a depositor for an investment in stock under this section, the savings bank authority shall, in the prescribed manner, and on the prescribed day, not later than seven days after the receipt of the request, charge the depositor with the current price on that day of the stock and the commission, and credit the depositor with the equivalent amount of stock out of stock standing to the savings bank investment account of the National Debt Commissioners, and send to the depositor a certificate thereof in the prescribed form.

(4.) On a request for a sale of stock under this section the savings bank authority shall, in the prescribed manner, and on the prescribed day, not later than seven days after the receipt of the request, discharge the savings bank investment account of the National Debt Commissioners from the proper amount of stock and write the same off from the account of that depositor, and credit him with the current price on the said day of that stock after deducting commission, and shall forthwith pay over the same to him.

(5.) The dividends on the Government stock credited to a depositor shall, subject to the deduction of the commission be dealt with in the same manner as interest on the deposits of that depositor.

(6.) For the purpose of an immediate investment under this section a deposit to an amount not exceeding the value of one hundred pounds stock with the commission may be deposited in one savings bank year, and in computing the maximum amount of deposit allowable for a depositor in a savings bank, the value of the amount of stock credited to the account of that depositor, or any sum deposited for the sole purpose of an immediate investment in stock, shall not be reckoned, and if by the price of any stock being credited to him as aforesaid, or by the deposit of any sum for immediate investment in stock, his deposit is raised so as to be in excess of the said maximum, that excess shall not be deemed unlawful.

(7.) Subject to the regulations under this Act all sums received by any savings bank authority for investment in Government stock shall be paid over to the National Debt Commissioners, and shall be invested in like manner as other moneys in the hands of those Commissioners, and all sums required for the payment of the sums credited to depositors as the price of stock sold shall be provided and paid by the National Debt Commissioners in like manner as sums required to repay deposits in savings banks.

The National Debt Commissioners shall keep to the prescribed account (in this Act referred to as the savings bank investment account) such amount of and description of Government stock

as is sufficient to meet the amounts and description of stock credited to depositors in pursuance of this Act.

(8.) Subject to the regulations under this Act, on a request from a depositor to obtain for him a stock certificate with coupons annexed, under the National Debt Act, 1870, for such amount of stock standing to his account, being either fifty pounds or a multiple of fifty pounds, as is specified in the request, the savings bank authority shall, in the prescribed manner, write off the amount of stock from the account of the said depositor, and procure from the National Debt Commissioners a stock certificate for the same amount of stock.

Provided, that the sum required to pay for the commission, the expenses, and the fee for the stock certificate shall be paid by, or debited in account to, the depositor in the prescribed manner.

(9.) There shall be charged the prescribed commission on the investment and sale of stock and on the receipt of the dividends under this section, and such commission shall be applied in the prescribed manner in defraying the expenses incurred in carrying into effect this section.

(10.) The current price for purchases and sales respectively on any day shall be a price to be ascertained and certified on that day in the prescribed manner.

(11.) Subject to the regulations made under this Act all enactments for the time being in force relating to savings banks, and all regulations made in pursuance of those enactments, shall, so far as is consistent with the tenour thereof, be construed in like manner as if the stock standing to the credit of any account were a deposit.

4. Subject to the provisions of this Act the Treasury, with the consent of the National Debt Commissioners so far as any regulations relate to those Commissioners, and with the consent of the Postmaster General so far as any regulations relate to Post Office Savings Banks, may from time to time make and when made revoke, alter, or add to regulations with respect to—

(1.) Investments in and sales of stock in pursuance of this Act; and the receipt and payment of dividends on such stock; and

(2.) Any other matter or thing necessary or proper for the purpose of carrying into effect this Act.

All regulations so made shall come into operation at the time therein mentioned, and shall be binding on all persons as if they were enacted in this Act; and a copy thereof shall be laid before both Houses of Parliament within one month after they are made if Parliament be then sitting, and if not, within one month after the com-

mencement of the then next session of Parliament.

5. In this Act, unless the context otherwise requires—

The expression "Postmaster General" means Her Majesty's Postmaster General for the time being.

The expression "Treasury" means the Commissioners of Her Majesty's Treasury.

The expression "Government stock" means Consolidated Three Per Cent. Bank Annuities, Reduced Three Per Cent. Bank Annuities, and New Three Per Cent. Bank Annuities.

The expression "National Debt Commissioners" means the Commissioners for the Reduction of the National Debt.

The expression "prescribed" means prescribed by the regulations made under this Act.

The expression "trustee savings bank" means a savings bank to which the Trustee Savings Banks Act, 1863, extends.

The expression "savings bank authority" means as regards any trustee savings bank the trustees of that bank, and as regards the Post Office Savings Banks the Postmaster General.

The expression "trustees" includes managers.

A savings bank year shall be reckoned as the twelve months ending, in the case of a trustee savings bank, on the twentieth day of November, and in the case of a Post Office Savings Bank, on the thirty-first day of December.

In computing time for the purposes of this Act there shall be excluded every Sunday and every day which is a holiday within the meaning of the Bank Holidays Act, 1871, and the Holidays Extension Act, 1875.

6. Nothing in section twenty-nine of the Trustee Savings Banks Act, 1863, shall require the trustees of any trustee savings bank to ascertain, certify, and pay over annually to the National Debt Commissioners the amount of any increased stock and property, except when they are required so to do by the said Commissioners, and any amount so paid over shall carry interest at the same rate as any other sums standing to the credit of the said trustee savings bank.

7. This Act shall come into operation on the first day of November one thousand eight hundred and eighty.

8. This Act may be cited as the Savings Banks Act, 1880.

Each of the Acts set forth in the Schedule to this Act is in this Act referred to and may be cited by the short title therein mentioned.

## SCHEDULE.

## ACTS REFERRED TO.

Session and Chapter.	Title.	Short Title.
26 & 27 Vict. c. 25.	- An Act to make further provision for the investment of the moneys received by the Commissioners for the Reduction of the National Debt from the trustees of savings banks established under the enactments of the Act Ninth George the Fourth, chapter ninety-two.	The Savings Bank Investment Act, 1863.
26 & 27 Vict. c. 87.	- An Act to consolidate and amend the laws relating to savings banks.	The Trustee Savings Banks Act, 1863.

## CHAP. 37.

*Census Act, 1880.*

## ABSTRACT OF THE ENACTMENTS.

1. *Local Government Board to superintend the taking of the census.*
2. *Registrar's sub-districts to be formed into enumerators divisions.*
3. *Enumerators to be appointed.*
4. *Householders schedules to be left at dwelling-houses. Occupiers to fill up the schedules and sign and deliver them to the enumerator. Penalty for neglect.*
5. *Schedules to be collected from house to house, and corrected if found to be erroneous.*
6. *Enumerators to take an account of houses, &c., and to distinguish the boundaries of parishes, boroughs, &c. Enumerators to deliver their books with the householders schedules, to the registrar.*
7. *Registrars to verify the enumerators books.*
8. *Superintendent registrars to examine the enumerators books and return them to the Registrar-General.*
9. *An abstract of returns to be printed and laid before Parliament.*
10. *Masters, &c. of gaols, &c. to be appointed enumerators of the inmates thereof.*
11. *Overseers, peace officers, and relieving officers of unions formed under 4 & 5 Will. 4. c. 76. bound to act as enumerators.*
12. *Returns of persons travelling or on shipboard, or not in houses.*
13. *Table of allowances to enumerators and others.*
14. *Payments to be certified to the Registrar General.*
15. *Manner in which the payments shall be made to persons employed in execution of this Act in England.*
16. *Penalty on persons for wilful default.*
17. *Penalty for refusing information or giving false answers.*
18. *Recovery of penalties.*
19. *Interpretation of terms.*
20. *Title of the Act.*

An Act for taking the Census of England.  
(7th September 1880.)

WHEREAS it is expedient to take the census of England in the year one thousand eight hundred and eighty-one:

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. The Local Government Board shall have the care of superintending the taking of the census, and shall cause to be prepared and printed, for the use of the persons to be employed in taking it, such forms and instructions as the said Board shall deem necessary, and the Registrar General shall issue all such forms and instructions to the persons for whose use they shall be intended; and all the expenses which shall be incurred by authority of the said Board, with the consent of the Treasury, under this Act, shall be paid out of such moneys as shall be provided by Parliament for that purpose.

2. Every registrar's sub-district in England shall be formed into enumerators divisions according to instructions to be prepared by or under the direction of the said Board, who shall cause a sufficient number of copies of such instructions to be sent to every registrar of births and deaths in England; and the registrars, with all convenient speed, shall divide the several sub-districts into enumerators divisions according to such instructions, and subject in each case to the revision of the superintendent registrar, and to the final revision and approval of the Registrar General.

3. The several registrars of births and deaths in England shall make and return to their respective superintendent registrars a list containing the names and places of abode of a sufficient number of persons, duly qualified according to instructions to be prepared by or under the direction of the said Board, to act as enumerators within their several sub-districts, and such persons, when approved of by the superintendent registrar, shall be appointed by him enumerators for taking the census, subject nevertheless to the approval of the Registrar General; and the registrar, with the approval of the superintendent registrar, shall assign a division to each enumerator, and shall distribute to the several enumerators in his sub-district the forms and instructions which shall have been issued for that purpose by the Registrar General, and shall personally ascertain that each enumerator thoroughly understands the manner in which the duties required of him are to be performed.

4. Schedules shall be prepared by or under the direction of the said Board for the purpose of being filled up by or on behalf of the several occupiers of dwelling-houses as herein-after provided, with particulars of the name, sex, age, rank, profession or occupation, condition as to marriage, relation to head of family, and birthplace of every living person who abode in every house on the night of Sunday the third day of April one thousand eight hundred and eighty-one, and also whether any were blind, or deaf and dumb, or imbecile or lunatic; and the registrars in England shall in the course of the week ending on Saturday the second day of April in the said year one thousand eight hundred and eighty-one leave or cause to be left at every dwelling-house within their respective sub-districts one or more of the said schedules for the occupier or occupiers thereof or of any part thereof, and upon every such schedule shall be plainly expressed that it is to be filled up by the occupier of such dwelling-house, (or where such dwelling-house is let or sub-let in different stories or apartments, and occupied distinctly by different persons or families, by the occupier of each such distinct story or apartment,) and that the enumerator will collect all such schedules within his division on the Monday then next following.

Every occupier of any dwelling-house or of any distinct story or apartment in any dwelling-house, with or for whom any such schedule shall have been left as aforesaid, shall fill up the said schedule to the best of his or her knowledge and belief, so far as relates to all persons dwelling in the house, story, or apartment occupied by him or her, and shall sign his or her name thereunto, and shall deliver the schedule so filled up, or cause the same to be delivered, to the enumerator when required so to do.

Every such occupier who shall wilfully refuse or without lawful excuse neglect to fill up the said schedule to the best of his or her knowledge and belief, or to sign and deliver the same as herein required, or who shall wilfully make, sign, or deliver, or cause to be made, signed, or delivered, any false return of all or any of the matters specified in the said schedule, shall forfeit a sum not more than five pounds nor less than twenty shillings.

5. The enumerators shall visit every house in their respective divisions, and shall collect all the schedules so left within their division from house to house, so far as may be possible, on Monday the fourth day of April in the said year one thousand eight hundred and eighty-one, and shall complete such of the schedules as upon delivery thereof to them shall appear to be defective, and correct such as they shall find to be erroneous, and shall copy the schedules, when completed and corrected, into books to be pro-

vided them for that purpose, and shall add thereunto an account, according to the best information which they shall be able to obtain, of all the other persons living within their division who shall not be included in the schedules so collected by them.

6. Every enumerator shall also take an account of the occupied houses, and of the houses then building and therefore uninhabited, and also of all other uninhabited houses within his division, and shall also take an account of all such particulars herein-before mentioned, and none others, according to the forms and instructions which may be issued under this Act; and in the book into which he shall have copied the householders schedules and other particulars, as herein-before directed, each enumerator shall distinguish the several civil parishes within his division, or such parts thereof as shall be within his division, and shall also distinguish those civil parishes or parts of civil parishes within his division which are within the limits of any city or borough returning or contributing to return a member or members to serve in Parliament, or of any incorporated city or borough, or of any urban sanitary district, or of any rural sanitary district, or of any ecclesiastical district or parish, or of any area prescribed in that behalf by the instructions, and shall deliver such book to the registrar of the sub-district, together with the householders schedules collected by him, and shall sign a form or declaration to the effect that the said book has been truly and faithfully filled up by him, and that to the best of his knowledge the same is correct, which form of declaration shall be prepared by or under the direction of the Local Government Board, and issued by the Registrar General with the forms and instructions aforesaid.

7. The registrar to whom such enumerators books shall be delivered shall examine the same, and shall satisfy himself that the instructions in each case have been punctually fulfilled, and if not shall cause any defect or inaccuracy in the said book to be supplied so far as may be possible; and when the books shall have been made as accurate as is possible the registrar shall deliver them to the superintendent registrar of his sub-district, and thereafter shall transmit the householders schedules to the Registrar General.

8. The superintendent registrar shall examine all the books which shall be so delivered to him, and shall satisfy himself how far the registrars have duly performed the duties required of them by this Act, and shall cause any inaccuracies which he shall discover in such books to be corrected so far as may be possible, and shall return on or before the second day of May one thousand eight hundred and eighty-one, or such other day

as may be fixed by the Registrar General, all the said books to the Registrar General for the use of the Local Government Board.

9. The said Board shall cause a detailed abstract to be made of the said returns; and also a preliminary abstract which shall be printed and laid before both Houses of Parliament within three calendar months next after the first day of June in the year one thousand eight hundred and eighty-one, if Parliament be sitting, or if Parliament be not sitting, then within the first fourteen days of the session then next ensuing.

10. The master or keeper of every gaol, prison, or house of correction, workhouse, hospital, or lunatic asylum, and of every public or charitable institution, which shall be determined upon by the Registrar General, shall be the enumerator of the inmates thereof, and shall be bound to conform to such instructions as shall be sent to him by the authority of the said Board for obtaining the returns required by this Act, so far as may be practicable, with respect to such inmates.

11. The overseers of the poor in every civil parish in England, and the constables or other peace officers for such civil parishes, and the relieving officers of any union or civil parish not in union having a board of guardians acting under the Poor Law Amendment Act, 1834, or the Acts amending the same, shall be bound to act as enumerators under this Act within their respective civil parishes and unions, if required so to act by the said board; and where they shall so act shall be entitled to allowances as enumerators under the provisions of this Act; and every such overseer, relieving officer, constable, and other peace officer who shall refuse or wilfully neglect so to act, and duly to perform the duties required of the said enumerators by this Act, shall for every such offence forfeit a sum not more than ten pounds nor less than five pounds.

12. The Local Government Board shall obtain, by such ways and means as shall appear to them best adapted for the purpose, returns of the particulars required by this Act with respect to all persons who during the said night of Sunday the third day of April were travelling or on shipboard, or for any other reason were not abiding in any house of which account is to be taken by the enumerators and other persons as aforesaid, and shall include such returns in the abstract to be made by them as aforesaid.

13. The said Board shall cause to be prepared a table of allowances to be made to the several enumerators, registrars, superintendent registrars, and other persons in England employed in the execution of this Act; and such table, when approved by the Treasury, shall be laid before

both Houses of Parliament on or before the first day of March one thousand eight hundred and eighty-one, if Parliament be sitting, or if Parliament be not sitting, then within the first fourteen days of the session then next ensuing.

14. The superintendent registrar of every district in England shall within one calendar month next after the taking the census certify to the Registrar General the total amount of the allowances to which he, and the registrars, enumerators, and other persons in that district, are respectively entitled according to the said table.

15. The Treasury shall, through the Registrar General, pay to each superintendent registrar, out of the moneys provided by Parliament for that purpose, the whole amount of the allowances to which the said superintendent registrar, and the registrars, enumerators, and other persons in each district are severally entitled according to the said table; and each superintendent registrar shall pay over to the registrars in his district the allowances to which they the said registrars are entitled, and shall also pay over or cause to be paid over to the enumerators and other persons in his district the allowances to which they are severally entitled according to the said table; and the receipts to be given by the enumerators and other persons and registrars for payment of their said allowances shall be delivered to the superintendent registrar, who shall transmit the same, together with the receipt for his own allowance, to the Registrar General:

Provided that no such payment shall be made to any enumerator or other person who shall be required to act as an enumerator under this Act, but upon production of a certificate under the hand of the registrar that the duties required of such enumerator or other person acting as enumerator by this Act have been faithfully performed, and the like certificate shall be required under the hand of the superintendent registrar with respect to the registrar before any payment shall be made to the registrar, and the like certificate under the hand of the Registrar General with respect to the superintendent registrar be-

fore any payment shall be made to the superintendent registrar.

16. Every superintendent registrar and registrar, and every enumerator and other person who is bound under this Act if required to act as enumerator, making wilful default in any of the matters required of them respectively by this Act, or making any wilfully false declaration, shall for every such wilful default or false declaration forfeit a sum not exceeding five pounds nor less than two pounds.

17. The enumerators and other persons employed in the execution of this Act shall be authorised to ask all such questions as shall be directed in any instructions to be prepared by or under the direction of the Local Government Board, which shall be necessary for obtaining the returns required by this Act; and every person refusing to answer or wilfully giving a false answer to such questions, or any of them, shall for every such refusal or wilfully false answer forfeit a sum not exceeding five pounds nor less than twenty shillings.

18. All penalties imposed by this Act shall be recovered in a summary manner before two justices of the peace, having jurisdiction in the county or place where the offence is committed in the manner prescribed by law in this behalf.

19. In this Act—

The expression "civil parish" means a place for which a separate poor rate is or can be made, and has in the metropolis the same meaning as in the Metropolis Management Act, 1855.

The expression "dwelling-house" shall include all buildings and tenements of which the whole or any part shall be used for the purpose of human habitation.

The expression "Treasury" means the Commissioners of Her Majesty's Treasury.

20. This Act may be cited as the Census Act, 1880.

## CHAP. 38.

### *Census (Scotland) Act, 1880.*

#### ABSTRACT OF THE ENACTMENTS.

1. *Secretary of State to superintend census.*
2. *Copy of this Act to be sent to every sheriff and the chief magistrate of Edinburgh, &c.*
3. *Registrars districts to be formed into enumerators divisions.*
4. *Enumerators to be appointed.*

5. *Householders schedules to be left at dwelling-houses. Occupiers to fill up the schedules and sign and return them to the enumerator. Penalty for neglect.*
6. *Schedules to be collected from house to house, and corrected, if found to be erroneous.*
7. *Enumerators to take an account of houses, &c., and to distinguish the boundaries of parishes and burghs. Enumerators to deliver their books, with the householders schedules, to the registrar.*
8. *Registrars to verify the enumerators books, and deliver them to the sheriff, &c.*
9. *Returns to be given to the sheriffs of counties and chief magistrates of Edinburgh, &c.*
10. *Sheriffs of counties and chief magistrates of Edinburgh, &c. to receive the returns and transmit them to the Registrar General.*
11. *An abstract of returns to be printed and laid before Parliament.*
12. *Governors, &c. of gaols, &c. to be appointed enumerators of the inmates thereof.*
13. *Inspectors of poor, &c. bound to act as enumerators.*
14. *Returns of houseless poor and of persons travelling or on shipboard.*
15. *Table of allowances to enumerators and other persons employed.*
16. *Payments to be certified to the Registrar General.*
17. *Manner in which the payments shall be made to persons employed in execution of this Act.*
18. *Penalty for wilful default.*
19. *Penalty for refusing information or giving false answers.*
20. *Recovery and application of penalties.*
21. *Interpretation of terms.*
22. *Short title.*

### An Act for taking the Census of Scotland. (7th September 1880.)

WHEREAS it is expedient to take the census of Scotland in the year one thousand eight hundred and eighty-one:

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. One of Her Majesty's Principal Secretaries of State (herein-after called the Secretary of State) shall have the care of superintending the taking of the census of Scotland, and shall cause to be prepared and printed, for the use of the persons to be employed in taking it, such forms and instructions as he shall deem necessary, and the Registrar General for Scotland shall issue all such forms and instructions to the persons for whose use they shall be intended; and all the expenses which shall be incurred by authority of such Secretary of State, with the consent of the Commissioners of Her Majesty's Treasury, under this Act, shall be paid out of such moneys as shall be provided by Parliament for that purpose.

2. The Registrar General for Scotland shall send a printed copy of this Act to the sheriff of every county in Scotland, and to the chief magistrate of the burghs of Edinburgh, Glasgow, Dundee, Aberdeen, Greenock, Paisley, Leith, and Perth.

3. Every registrar's district in Scotland shall be formed into enumerator's divisions according to instructions to be prepared by or under the direction of such Secretary of State, who shall

cause a sufficient number of copies of such instructions to be sent to every registrar of births, deaths, and marriages in Scotland; and the registrars, with all convenient speed, shall divide the several districts into enumerators divisions according to such instructions, and subject in each case to be revised by the sheriff of the county or the chief magistrate of the burgh, being one of the burghs mentioned in the second section hereof, as the case may be.

4. The several registrars of births, deaths, and marriages in Scotland shall make and return, in the case of the burghs mentioned in the second section hereof to the chief magistrate of the burgh, and in the case of every other burgh and of every county to the sheriff of the county, a list containing the names and places of abode of a sufficient number of persons, duly qualified according to instructions to be prepared by or under the direction of the Secretary of State, to act as enumerators within their several districts, and such persons, when approved of by the sheriff or chief magistrate, shall be appointed by the registrar, by any writing under his hand, enumerators for taking the census; and the registrar, with the like approval, shall assign a division to each enumerator, and shall distribute to the several enumerators in his district the forms and instructions which shall have been issued for that purpose by the Registrar General for Scotland, and shall personally ascertain that each enumerator thoroughly understands the manner in which the duties required of him are to be performed.

5. Schedules shall be prepared by or under the direction of the Secretary of State for the purpose of being filled up by or on behalf of the

several occupiers in dwelling-houses as herein-after provided, with particulars of the name, sex, age, rank, profession or occupation, condition, relation to head of family, and birthplace of every living person who abode in every house on the night of Sunday the third day of April one thousand eight hundred and eighty-one, and also whether any were blind, or deaf and dumb, or imbecile or lunatic, and the registrars in Scotland shall in the course of the week ending on Saturday the second day of April in the year one thousand eight hundred and eighty-one, leave or cause to be left at every dwelling-house within their respective districts one or more of the said schedules for the occupier or occupiers thereof or of any part thereof, and upon every such schedule shall be plainly expressed that it is to be filled up by the occupier of such dwelling-house, (or where such dwelling-house is let in different stories or apartments, and occupied distinctly by different persons or families, by the occupier of each such distinct story or apartment,) and that the enumerator will collect all such schedules within his division on the Monday then next following; and every occupier of any dwelling-house, or of any distinct story or apartment in any dwelling-house, with or for whom any such schedule shall have been left as aforesaid, shall fill up the said schedule to the best of his or her knowledge and belief, so far as relates to all persons dwelling in the house, story, or apartment occupied by him or her, and shall sign his or her name thereunto, and shall deliver the schedule so filled up, or cause the same to be delivered, to the enumerator when required so to do; and every such occupier who shall wilfully refuse or without lawful excuse neglect to fill up the said schedule to the best of his or her knowledge and belief, or to sign and deliver the same as herein required, or who shall wilfully make, sign, or deliver, or cause to be made, signed, or delivered, any false return of all or any of the matters specified in the said schedule, shall forfeit a sum not more than five pounds nor less than twenty shillings.

6. The enumerators shall visit every house in their respective divisions, and shall collect all the schedules so left within their division from house to house, so far as may be possible, on Monday the fourth day of April in the year one thousand eight hundred and eighty-one, and shall complete such of the schedules as upon delivery thereof to them shall appear to be defective, and correct such as they shall find to be erroneous, and shall copy the schedules, when completed and corrected, into books to be provided them for that purpose, and shall add thereunto an account, according to the best information which they shall be able to obtain, of all the other persons living within their division who shall not be included in the schedules so collected by them.

7. Every enumerator shall also take an account of the occupied houses, and of the houses then building and therefore uninhabited, and also of all other uninhabited houses within his division, stating the number of rooms, including the kitchen, if any, as a room, having a window or windows, not being windows with a borrowed light, in each dwelling-house, and shall also take an account of all the particulars herein-before mentioned, and none other, according to the forms and instructions which may be issued under this Act; and in the book into which he shall have copied the householders schedules and other particulars, as herein-before directed, each enumerator shall distinguish the several parishes and school board districts within his division, or such parts thereof as shall be within his division, and shall also distinguish those parishes or parts of parishes within his division which are within the limits of any city or burgh returning or contributing to return a member or members to serve in Parliament, or any royal burgh or any place in which either of the General Police and Improvement Acts, thirteenth and fourteenth Victoria, chapter thirty-three, or twenty-fifth and twenty-sixth Victoria, chapter one hundred and one, has been adopted, and shall deliver such book to the registrar of the district, together with the householders schedules collected by him, and shall sign a form or declaration to the effect that the said book has been truly and faithfully filled up by him, and that to the best of his knowledge the same is correct, which form of declaration shall be prepared by or under the direction of such Secretary of State, and issued by the Registrar General for Scotland with the forms and instructions aforesaid.

8. The registrar to whom such enumerators books shall be delivered shall examine the same, and shall satisfy himself that the instructions in each case have been punctually fulfilled, and if not shall cause any defect or inaccuracy in the said books to be supplied so far as may be possible; and when the books shall have been made as accurate as is possible the registrar shall deliver them to the sheriff of the county or the chief magistrate of the burgh, being one of the burghs mentioned in the second section hereof, as the case may be, as herein-after provided, and thereafter shall transmit the householders schedules to the Registrar General for Scotland.

9. The sheriff of every county and the chief magistrate of each of the burghs mentioned in the second section hereof shall appoint a time or times, which shall not be earlier than the ninth nor later than the twenty-third day of April one thousand eight hundred and eighty-one, for the registrars of districts within their respective jurisdictions to attend at such places as they may appoint, with the books filled up under this Act.

of which times and places intimation shall be given to the registrars in such manner as shall be directed by the sheriffs and chief magistrates respectively, who shall then and there receive from the registrars the said books, and cause every registrar to make a declaration to the effect that to the best of his knowledge the same are correct; and the sheriffs and chief magistrates, if they see cause, may examine the registrars touching any of the matters to which the books relate, and shall cause any inaccuracies which they shall discover in such books to be corrected so far as may be possible, and shall thereafter direct the sheriff clerk of the county or the town clerk of the burgh, being one of the burghs mentioned in the second section hereof, as the case may be, to indorse the same (if not previously indorsed) with the name of the county wherein the parish or place therein mentioned is situate, or otherwise (where any of the said sheriffs shall think proper) they shall direct the registrar to verify the said books before any justice of the peace of their respective counties, and thereafter to transmit the same previously to the said twenty-third day of April in any convenient manner to the said sheriffs, who shall direct the same to be indorsed as aforesaid.

10. The sheriffs of counties and the chief magistrates of each of the burghs mentioned in the second section hereof shall, on or before the fourth day of May one thousand eight hundred and eighty-one, transmit all the books by them received from the registrars (together with a list of the parishes and places, including the burghs not mentioned in the second section hereof, within their respective counties and burghs, being burghs mentioned in the said section, from whence no returns have been made to them,) to the office of the Registrar General for Scotland for the use of the Secretary of State: Provided always, that such Registrar General may empower the said sheriffs or chief magistrates, or any of them, on a special application to that effect, to retain the said books for any period not later than the sixteenth day of May of the said year.

11. The Secretary of State shall cause an abstract to be made of the said returns; and such abstract shall be printed, and laid before both Houses of Parliament within twelve calendar months next after the first day of June in the year one thousand eight hundred and eighty-one, if Parliament be sitting, or if Parliament be not sitting, then within the first fourteen days of the session then next ensuing.

12. The governor, master, or keeper of every gaol, prison, or house of correction, poorhouse, hospital, or lunatic asylum, and of every public or charitable institution, which shall be deter-

mined upon by the said Registrar General, shall be the enumerator of the inmates thereof, and shall be bound to conform to such instructions as shall be sent to him by the authority of the Secretary of State for obtaining the returns required by this Act, so far as may be practicable, with respect to such inmates.

13. The inspectors and assistant inspectors of poor in every parish or combination in Scotland shall be bound to act as enumerators under this Act within their respective parishes and combinations, if required so to act by the authority of the Secretary of State, and when they shall so act shall be entitled to allowances as enumerators under the provisions of this Act; and every such inspector or assistant inspector of poor who shall refuse or wilfully neglect so to act and duly to perform the duties required of the said enumerators by this Act, shall for every such offence forfeit a sum not more than ten pounds nor less than five pounds.

14. The Secretary of State shall obtain, by such ways and means as shall appear to him best adapted for the purpose, returns of the particulars required by this Act with respect to all houseless persons, and all persons who during the said night of Sunday the third day of April were travelling or on shipboard, or for any other reason were not abiding in any house of which account is to be taken by the enumerators and other persons as aforesaid, and shall include such returns in the abstract to be made by him as aforesaid.

15. The Secretary of State shall cause to be prepared a table of allowances to be made to the several enumerators, registrars, sheriff clerks, town clerks of burghs mentioned in the second section hereof, and other persons in Scotland employed in the execution of this Act; and such table, when approved by the Commissioners of Her Majesty's Treasury, shall be laid before both Houses of Parliament on or before the first day of March one thousand eight hundred and eighty-one, if Parliament be sitting, or if Parliament be not sitting, then within the first fourteen days of the session then next ensuing.

16. The sheriff of every county and the chief magistrate of each of the burghs mentioned in the second section hereof shall, within one calendar month next after the taking of the census, certify to the Registrar General for Scotland the total amount of the allowances to which the registrars, enumerators, sheriff clerks, town clerks of the said burghs, and other persons are respectively entitled according to the said table.

17. The sheriffs of counties and the chief magistrates of the burghs mentioned in the

second section hereof shall grant to the sheriff clerks and town clerks of the said burghs respectively, and the several registrars, enumerators, or other persons employed in the execution of this Act, such allowances as shall have been certified as herein-before provided, together with any necessary expenses incurred by them or any of them in the execution of this Act, and shall order payment thereof to be made by the Queen's and Lord Treasurer's Remembrancer out of the moneys provided by Parliament for that purpose, and he shall pay the same accordingly; and the receipts to be given by the registrars, enumerators, and other persons for payment of their said allowances shall be delivered to the sheriff clerk or such town clerk, as the case may be, who shall transmit the same, together with the receipt for his own allowance, to the Registrar General for Scotland: Provided always, that no such payment shall be made to any enumerator or other person who shall be required to act as an enumerator under this Act, but upon production of a certificate under the hand of the registrar that the duties required of such enumerator or other person acting as enumerator by this Act have been faithfully performed, and the like certificate shall be required under the hand of the sheriff or such chief magistrate, as the case may be, with respect to the registrar, before any payment shall be made to him.

18. Every registrar, and every enumerator and other person who shall be required to act as enumerator, so appointed as aforesaid, making wilful default in any of the matters required of them respectively by this Act, or making any

wilfully false declaration, shall for every such wilful default or false declaration forfeit a sum not exceeding five pounds nor less than two pounds.

19. The enumerators and other persons employed in the execution of this Act shall be authorised to ask all such questions as shall be directed in any instructions to be prepared by or under the direction of the Secretary of State which shall be necessary for obtaining the returns required by this Act; and every person refusing to answer or wilfully giving a false answer to such questions or any of them shall for every such refusal or wilfully false answer forfeit a sum not exceeding five pounds nor less than twenty shillings.

20. All offences committed in contravention of this Act shall be prosecuted, and all penalties imposed by this Act shall be recovered before the sheriff in a summary manner, under the provisions of the Summary Procedure Act, 1864; and every such penalty shall be paid, one half to the informer, and the other half to the Queen's and Lord Treasurer's Remembrancer on behalf of Her Majesty.

21. The term "sheriff" shall include sheriff substitute; the term "dwelling-house" shall include all buildings and tenements of which the whole or any part shall be used for the purpose of human habitation.

22. This Act may be cited as the Census (Scotland) Act, 1880.

#### CHAP. 39.

#### *County Court Jurisdiction in Lunacy (Ireland) Act, 1880.*

##### ABSTRACT OF THE ENACTMENTS.

1. *Short title.*
2. *Jurisdiction.*

An Act to confer jurisdiction in Lunacy upon the County Courts in Ireland in certain cases.

(7th September 1880.)

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited for all purposes as the County Court Jurisdiction in Lunacy (Ireland) Act, 1880.

2. From and after the passing of this Act, every Civil Bill Court in Ireland shall have and may exercise, with reference to persons who reside within the jurisdiction of such Civil Bill Court and whose property, or the net estimated value of whose property, does not exceed the sum of seven hundred pounds sterling in respect

of the corpus thereof, or the sum of fifty pounds sterling per annum in respect of the income thereof, all the jurisdiction, power, and authority in lunacy of the Lord Chancellor of Ireland for the time being intrusted by virtue of the Queen's Sign Manual with the care and commitment of the custody of the persons and estates of persons found idiot, lunatic, or of unsound mind.

The several provisions of the County Officers and Courts (Ireland) Act, 1877, so far as they relate to equitable jurisdiction and are applicable, shall apply to all proceedings instituted under

this Act, as if the jurisdiction conferred by this Act had been conferred by the second part of the said Act; and this Act shall, so far as is consistent with the tenor thereof, be construed with the said County Officers and Courts (Ireland) Act, 1877, and with the Lunacy Regulation (Ireland) Act, 1871; and the power of making rules and orders contained in the County Officers and Courts (Ireland) Act, 1877, shall include the power of making rules and orders for carrying the purposes of this Act into effect, and prescribing the forms of proceedings and the duties of officers under it.

#### CHAP. 40.

#### *Appropriation Act, 1880 (Session 2).*

##### ABSTRACT OF THE ENACTMENTS.

##### *Grant out of Consolidated Fund.*

1. *Issue of 13,614,207l. out of the Consolidated Fund.*
2. *Power for the Treasury to borrow.*

##### *Appropriation of Grants.*

3. *Appropriation of sums voted for supply services.*
4. *Repeal of part of 43 Vict. c. 13. Sums granted to be applied as directed by this or recited Act.*
5. *Treasury may, in certain cases of exigency, authorise expenditure unprovided for; provided that the aggregate grants for the navy services and for the army services respectively be not exceeded.*
6. *Sanction for navy and army expenditure for 1878-79 unprovided for.*
7. *Declaration required in certain cases before receipt of sums appropriated.*
8. *Short title of Act.*

An Act to apply a sum out of the Consolidated Fund to the service of the year ending on the thirty-first day of March one thousand eight hundred and eighty-one, and to appropriate the Supplies granted in this Session of Parliament.

(7th September 1880.)

Most Gracious Sovereign,

WE, Your Majesty's most dutiful and loyal subjects, the Commons of the United Kingdom of Great Britain and Ireland in Parliament assembled, towards making good the supply which we have cheerfully granted to Your Majesty in this session of Parliament, have resolved to grant unto Your Majesty the sum herein-after mentioned; and do therefore most humbly beseech Your Majesty that it may be enacted; and be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

##### *Grant out of Consolidated Fund.*

1. The Commissioners of Her Majesty's Treasury for the time being may issue out of the Consolidated Fund of the United Kingdom of Great Britain and Ireland, and apply towards making good the supply granted to Her Majesty for the service of the year ending on the thirty-first day of March one thousand eight hundred and eighty-one, the sum of thirteen million six hundred and fourteen thousand two hundred and seven pounds.

2. The Commissioners of Her Majesty's Treasury may borrow from time to time, on the credit of the said sum of thirteen million six hundred and fourteen thousand two hundred and seven pounds, any sum or sums of equal or less amount in the whole, and shall repay the moneys so borrowed, with interest not exceeding five pounds per centum per annum, out of the growing produce of the Consolidated Fund at any period not later than the next succeeding quarter to that in which the said moneys were borrowed.

Any moneys so borrowed shall be placed to the credit of the account of Her Majesty's

Exchequer, and shall form part of the said Consolidated Fund, and be available in any manner in which such fund is available.

*Appropriation of Grants.*

3. All sums granted by this Act and the other Acts mentioned in Schedule (A.) annexed to this Act out of the said Consolidated Fund towards making good the supply granted to Her Majesty, amounting, as appears by the said Schedule, in the aggregate, to the sum of twenty-nine million three hundred and fifty-seven thousand eight hundred and one pounds, are appropriated and shall be deemed to have been appropriated as from the date of the passing of the first of the Acts mentioned in the said Schedule (A.) for the purposes and services expressed in Schedule (B.) annexed hereto.

The abstract of schedules and schedules annexed hereto, with the notes (if any) to such schedules, shall be deemed to be part of this Act in the same manner as if they had been contained in the body thereof.

4. So much of the Act passed in the forty-third year of Her present Majesty, chapter thirteen, as limits or restricts the issue or application of the several sums granted to Her Majesty to services voted in that session of Parliament shall be and the same is hereby repealed; and the sums granted by the said Act, and those granted by this Act, shall and may be issued and applied generally to any use, intent, or purpose mentioned in, or to defray any payment directed to be satisfied by, this Act, or by the Act of the last session of Parliament, chapter thirteen; anything in the said recited Act or in this Act to the contrary thereof in anywise notwithstanding.

5. If a necessity arise for incurring expenditure not provided for in the sums appropriated to naval and military services by this Act, or by the said recited Act of the last session of Parliament, and which it may be detrimental to the public service to postpone until provision can be made for it by Parliament in the usual course, each of the departments entrusted with the control over the said services shall forthwith make application in writing to the Commissioners of Her Majesty's Treasury for their authority to defray temporarily such expenditure out of any surpluses which may have been or which may be effected by the saving of expenditure upon votes within the same department, and in such application the department shall represent to the Commissioners of the Treasury the circumstances which may render such additional expenditure necessary, and thereupon the said Commissioners may authorise the expenditure unprovided for as aforesaid to be temporarily defrayed out of any surpluses

which may have been or which may be effected as aforesaid upon votes within the same department; and a statement showing all cases in which the naval and military departments have obtained the sanction of the said Commissioners to any expenditure not provided for in the respective votes aforesaid, accompanied by copies of the representations made to them by the said departments, shall be laid before the House of Commons with the appropriation accounts of navy and army services for the year, in order that such proceedings may be submitted for the sanction of Parliament, and that provision may be made for the deficiencies upon the several votes for the said services in such manner as Parliament may determine.

The Commissioners of the Treasury shall not authorise any expenditure which may cause an excess upon the aggregate sums appropriated by this Act for naval services and for army services respectively.

6. Whereas the Commissioners of the Treasury, under the powers vested in them by the Act of the session held in the forty-first and forty-second years of the reign of Her present Majesty, chapter sixty-five, have authorised expenditure not provided for in the sums appropriated by the said Act to certain votes for naval and military services for the year ended on the thirty-first day of March one thousand eight hundred and seventy-nine, to be in part temporarily defrayed out of the balances unexpended in respect of the sums appropriated to certain other votes for naval and military services for the said year; viz.,

1st. Expenditure for certain navy services unprovided for, temporarily defrayed to the extent of one hundred and ninety-seven thousand one hundred and sixteen pounds fourteen shillings and one penny out of the unexpended balances of certain other votes for navy services :

2d. Expenditure for certain army services unprovided for, temporarily defrayed to the extent of four hundred and thirty-two thousand three hundred and four pounds eleven shillings and sixpence out of the unexpended balances of certain other votes for army services, and out of the sum realised in excess of the estimated appropriations in aid :

It is enacted, that the application of the said sums is hereby sanctioned.

7. A person shall not receive any part of a grant which may be made in pursuance of this Act for half-pay, or army, navy, or civil non-effective services until he has subscribed such declaration as may from time to time be prescribed by a warrant of the Commissioners of Her Majesty's Treasury before one of the persons prescribed by such warrant.

Provided that, whenever any such payment is made at more frequent intervals than once in a quarter, the Commissioners of Her Majesty's Treasury may dispense with the production of more than one declaration in respect of each quarter.

Any person who makes a declaration for the

purpose of this section, knowing the same to be untrue in any material particular, shall be guilty of a misdemeanor.

8. This Act may be cited for all purposes as the Appropriation Act, 1880 (Session 2).

### ABSTRACT

OF

SCHEDULES (A.) and (B.) to which this Act refers.

#### SCHEDULE (A.)

	£	s.	d.
Grants out of the Consolidated Fund	29,357,801	0	0

#### SCHEDULE (B.)—APPROPRIATION OF GRANTS.

1880-81:—				£	s.	d.
Part 1. Navy	-	-	-	To complete	7,869,706	0 0
				£		
" 2. Civil Services, Class I.	-	-	-	To complete	1,110,500	
" 3. Ditto, Class II.	-	-	-	To complete	1,671,786	
" 4. Ditto, Class III.	-	-	-	To complete	4,471,581	
" 5. Ditto, Class IV.	-	-	-	To complete	2,583,458	
" 6. Ditto, Class V.	-	-	-	To complete	414,485	
" 7. Ditto, Class VI.	-	-	-	To complete	942,983	
" 8. Ditto, Class VII.	-	-	-	To complete	32,240	
TOTAL CIVIL SERVICES				-	-	-
" 9. Revenue Departments, &c.	-	-	-	To complete	11,227,033	0 0
" 10. Advances for Greenwich Hospital and School	-	-	-	To complete	6,951,417	0 0
" 11. Exchequer Bonds, 1880-81	-	-	-	To complete	109,645	0 0
				-	3,200,000	0 0
				£	29,357,801	0 0

#### SCHEDULE (A.)—GRANTS OUT OF THE CONSOLIDATED FUND.

For the service of the year ending 31st March 1881; viz.

	£
Under Act 43 & 44 Vict. cap. 3.	4,925,320
Under Act 43 & 44 Vict. cap. 30.	10,818,274
Under this Act	13,614,207
TOTAL	29,357,801

## SCHEDULE (B.)—PART 1.

## NAVY.

SCHEDULE of SUMS granted to defray the charges of the NAVY SERVICES herein particularly mentioned, which will come in course of payment during the year ending on the 31st day of March 1881; viz.:—

No.		Sums not exceeding	
		£	
1.	For wages, &c. to 58,800 seamen and marines - - -	To complete -	2,041,152
2.	For victuals and clothing for seamen and marines - - -	To complete -	760,143
3.	For the expenses of the Admiralty Office - - -	To complete -	134,614
4.	For the expense of the coast guard service, the royal naval reserve, and seamen and marine pensioners reserve, and royal naval artillery volunteers - - -	To complete -	145,709
5.	For the expense of the several scientific departments of the navy - - -	To complete -	84,831
6.	For the expense of the dockyards and naval yards at home and abroad - - -	To complete -	1,027,689
7.	For the expense of the victualling yards at home and abroad - - -	To complete -	53,370
8.	For the expense of the medical establishments at home and abroad - - -	To complete -	47,584
9.	For the expense of the Marine Divisions - - -	To complete -	16,052
10. Sect. 1.	For naval stores for the building, repairing, and outfitting the fleet and coast guard - - -	To complete -	758,250
10. Sect. 2.	For steam machinery, and ships built by contract, &c. - - -	To complete -	556,750
11.	For new works, buildings, machinery, and repairs in the naval establishments - - -	To complete -	419,213
12.	For medicines, medical stores, &c. - - -	To complete -	56,363
13.	For martial law, &c. - - -	To complete -	6,938
14.	For the expense of various miscellaneous services - - -	To complete -	101,820
15.	For half pay, reserved half pay, and retired pay to officers of the navy and marines - - -	To complete -	671,367
16. Sect. 1.	For military pensions and allowances - - -	To complete -	617,415
16. Sect. 2.	For civil pensions and allowances - - -	To complete -	241,821
17.	For freight of ships, for the victualling and conveyance of troops, on account of the army department - - -	To complete -	128,625
TOTAL NAVY SERVICES - £			<u>7,869,706</u>

## SCHEDULE (B.)—PART 2.

## CIVIL SERVICES.—CLASS I.

SCHEDULE of SUMS granted to defray the charges of the several CIVIL SERVICES herein particularly mentioned, which will come in course of payment during the year ending on the 31st day of March 1881; viz.:—

No.		Sums not exceeding	
		£	
1.	For the maintenance and repair of the royal palaces - - -	To complete -	28,271
2.	For the maintenance and repair of Marlborough House - - -	To complete -	1,820
3.	For the royal parks and pleasure gardens - - -	To complete -	84,297
4.	For the buildings of the Houses of Parliament (including a supplementary sum of 300 <i>l.</i> ) - - -	To complete -	26,701

		Sums not exceeding	
		£	
No.			
5.	For the maintenance and repair of public buildings in Great Britain and the Isle of Man; for providing the necessary supply of water; for rents of houses hired for accommodation of public departments, and charges attendant thereon, &c.	To complete -	87,232
5A.	For the acquisition of land as a site for public offices	-	68,600
6.	For the supply and repair of furniture in the public departments of Great Britain (including a supplementary sum of 1,556 <i>l.</i> )	To complete -	13,841
7.	For the expenses of the Customs, Inland Revenue, Post Office, and Post Office Telegraph Buildings, in Great Britain, including furniture, fuel, and sundry miscellaneous services	To complete -	137,973
8.	For new buildings for county courts, maintenance and repair of courts, supply of furniture, fuel, &c., and other charges attendant thereon	To complete -	37,900
9.	For charges connected with Metropolitan Police Court Buildings	To complete -	20,145
10.	For one half of the expense of erecting or improving court houses or offices for the sheriff courts in Scotland, and the expense of maintaining the courts erected or improved	To complete -	6,100
11.	For the purchase of a site, erection of building, and other expenses for new courts of justice and offices belonging thereto	To complete -	82,200
11A.	For the purchase of the Union Bank Premises in Parliament Square, Edinburgh	-	16,000
12.	For the survey of the United Kingdom, including the revision of the survey of Ireland, maps for use in proceedings before the Land Judges in Ireland, publication of maps, and engraving the geological survey (including a supplementary sum of 5,000 <i>l.</i> )	To complete -	105,100
13.	For erecting and maintaining new buildings, including rents, &c., for the Department of Science and Art	To complete -	15,336
14.	For maintenance and repair of the several buildings occupied by the Trustees of the British Museum, for rents of premises, supply of water, fuel, &c., and charges attendant thereon	To complete -	3,493
15.	For the erection of a Natural History Museum, including fittings, &c.	To complete -	22,228
16.	For a grant in aid of the new buildings for the University of Edinburgh	-	20,000
17.	For maintaining certain harbours, &c. under the Board of Trade	To complete -	14,822
18.	For rates and contributions in lieu of rates in respect of Government property, and for salaries and expenses of the rating of Government property department	To complete -	130,356
19.	For contribution to the funds for the establishment and maintenance of a fire brigade in the metropolis	To complete -	7,500
20.	For erection, repairs, and maintenance of the several public buildings under the department of the Commissioners of Public Works in Ireland, and for the erection of fishery piers, and the maintenance of certain parks, harbours, and navigations (including a supplementary sum of 19,885 <i>l.</i> )	To complete -	131,408
21.	For expenses preparatory to the erection of the Museum of Science and Art in Dublin	To complete -	9,700
22.	For works to regulate the flood waters of the River Shannon	To complete -	15,000
23.	For erecting and maintaining certain lighthouses abroad	To complete -	8,060
24.	For diplomatic and consular buildings, including rents and furniture, and for the maintenance of certain cemeteries abroad	To complete -	16,417
TOTAL CIVIL SERVICES, CLASS I.			<u>1,110,500</u>

## SCHEDULE (B).—PART 3.

## CIVIL SERVICES.—CLASS II.

SCHEDULE of SUMS granted to defray the charges of the several CIVIL SERVICES herein particularly mentioned, which will come in course of payment during the year ending on the 31st day of March 1881; viz.:—

No.		Sums not exceeding	
		£	
1.	For salaries and expenses in the offices of the House of Lords -	To complete -	32,666
2.	For salaries and expenses in the offices of the House of Commons -	To complete -	37,706
3.	For salaries and expenses of the department of Her Majesty's Treasury and in the office of the Parliamentary Counsel -	To complete -	42,835
4.	For salaries and expenses of the office of Her Majesty's Secretary of State for the Home Department and subordinate offices -	To complete -	67,576
5.	For salaries and expenses of the department of Her Majesty's Secretary of State for Foreign Affairs -	To complete -	54,041
6.	For salaries and expenses of the department of Her Majesty's Secretary of State for the Colonies, including certain expenses connected with Emigration -	To complete -	27,812
7.	For salaries and expenses of the department of Her Majesty's Most Honourable Privy Council and subordinate departments -	To complete -	23,179
8.	For salaries and expenses of the office of the Lord Privy Seal -	To complete -	2,090
9.	For salaries and expenses of the office of the Committee of Privy Council for Trade, and subordinate departments -	To complete -	126,443
10.	For salaries and expenses of the Charity Commission for England and Wales -	To complete -	24,305
11.	For salaries and expenses of the Civil Service Commission -	To complete -	19,265
12.	For salaries and expenses of the office of the Copyhold, Inclosure, and Tithe Commission -	To complete -	12,668
13.	For imprest expenses under the Inclosure and Drainage Acts -	To complete -	6,190
14.	For salaries and expenses of the department of the Comptroller and Auditor General, including the Chancery Audit Branch -	To complete -	42,017
15.	For salaries and expenses of the Registry of Friendly Societies -	To complete -	4,638
16.	For salaries and expenses of the Local Government Board, including various grants in aid of local taxation -	To complete -	318,417
17.	For salaries and expenses of the office of the Commissioners in Lunacy in England -	To complete -	11,395
18.	For salaries and expenses of the Mint, including the expenses of the coinage -	To complete -	46,665
19.	For salaries and expenses of the National Debt Office -	To complete -	13,141
20.	For charges connected with the Patent Law Amendment Act, the Registration of Trade Marks Act, and the Registration of Designs Act -	To complete -	20,195
21.	For salaries and expenses of the department of Her Majesty's Paymaster General in London and Dublin -	To complete -	19,255
22.	For salaries and expenses of the establishments under the Public Works Loan Commissioners and the West India Islands Relief Commissioners -	To complete -	7,695
23.	For salaries and expenses of the Public Record Office in England -	To complete -	15,737
24.	For salaries and expenses of the department of the Registrar General of Births, &c. in England -	To complete -	35,870

No.	Sums not exceeding	£
25. For stationery, printing, and paper, binding, and printed books for the several departments of Government in England, Scotland, and Ireland, and some dependencies, and for the two Houses of Parliament; for the salaries and expenses of the Establishment of the Stationery Office and the cost of Stationery Office publications, and of the Gazette Offices; and for sundry miscellaneous services, including a grant in aid of the publication of Parliamentary Debates	To complete -	344,979
26. For salaries and expenses of the office of Woods, Forests, and Land Revenues, and of the office of Land Revenue Records and Inrolments	To complete -	17,400
27. For salaries and expenses of the office of the Commissioners of Her Majesty's Works and Public Buildings	To complete -	30,618
28. For Her Majesty's foreign and other secret services	To complete -	17,200
29. For salaries and expenses of the department of the Queen's and Lord Treasurer's Remembrancer in Exchequer, Scotland, of certain officers in Scotland, and other charges formerly on the hereditary revenue	To complete -	4,856
30. For salaries and expenses of the Fishery Board in Scotland and for grants in aid of piers or quays	To complete -	9,734
31. For salaries and expenses of the Board of Lunacy in Scotland	To complete -	4,391
32. For salaries and expenses of the department of the Registrar General of Births, &c. in Scotland	To complete -	4,694
33. For salaries and expenses of the Board of Supervision for relief of the poor, and for expenses under the Public Health and Vaccination Acts, including certain grants in aid of local taxation in Scotland	To complete -	14,048
34. For salaries of the officers and attendants of the household of the Lord Lieutenant of Ireland and other expenses	To complete -	5,364
35. For salaries and expenses of the offices of the Chief Secretary to the Lord Lieutenant of Ireland in Dublin and London, and subordinate departments	To complete -	28,778
36. For salaries and expenses of the office of the Commissioners of Charitable Donations and Bequests for Ireland	To complete -	1,539
37. For salaries and expenses of the Local Government Board in Ireland, including various grants in aid of local taxation	To complete -	98,348
38. For salaries and expenses of the office of Public Works in Ireland (including a supplementary sum of 21,742l.)	To complete -	44,701
39. For salaries and expenses of the Public Record Office, and of the keeper of the State Papers in Ireland	To complete -	4,440
40. For salaries and expenses of the department of the Registrar General of Births, &c., and for expenses of the collection of agricultural and emigration statistics in Ireland	To complete -	11,968
41. For salaries and expenses of the general valuation and boundary survey of Ireland	To complete -	16,927
TOTAL CIVIL SERVICES, CLASS II.	-	<u>1,671,786</u>

## SCHEDULE (B.)—PART 4.

## CIVIL SERVICES.—CLASS III.

SCHEDULE of SUMS granted to defray the charges of the several CIVIL SERVICES herein particularly mentioned, which will come in course of payment during the year ending on the 31st day of March 1881; viz. :—

No.		Sums not exceeding	
		£	
1.	For the salaries of the law officers, the salaries and expenses of the department of the Solicitor for the affairs of Her Majesty's Treasury, and of the department of the Queen's Proctor for divorce interventions, the costs of prosecutions, including those relating to the coin and to bankruptcy, and of other legal proceedings conducted by those departments, and various other legal expenses, including Statute Law Revision and Parliamentary Agency - - - - -	To complete -	54,469
2.	For the salaries and expenses of the office of the Director of Public Prosecutions - - - - -	To complete -	3,050
3.	For criminal prosecutions at assizes and quarter sessions in England, including adjudications under the Criminal Justice and the Juvenile Offenders Acts, sheriffs expenses, salaries to clerks of assize and other officers, and for compensation to clerks of the peace and others, and for expenses incurred under Extradition Treaties - - - - -	To complete -	150,187
4.	For such of the salaries and expenses of the Chancery Division of the High Court of Justice, of the Court of Appeal, and of the Supreme Court of Judicature, exclusive of the Central Office, as are not charged on the Consolidated Fund - - - - -	To complete -	121,416
5.	For the salaries and expenses of the Central Office of the Supreme Court of Judicature, the salaries and expenses of the Judges' Clerks and other Officers, of the District Registrars of the High Court, the remuneration of the Judges' Marshals, and certain circuit and other expenses - - - - -	To complete -	76,796
6.	For salaries and expenses of the Registries of Probate and Divorce and Matrimonial Causes, &c., in the Probate, Divorce, and Admiralty Division of the High Court of Justice - - - - -	To complete -	69,715
7.	For salaries and expenses of the offices of the Admiralty Registrar and Marshal of the Probate, Divorce, and Admiralty Division of the High Court of Justice - - - - -	To complete -	8,445
8.	For salaries and expenses of the office of the Wreck Commissioner - - - - -	To complete -	10,166
9.	For salaries and expenses of the London Bankruptcy Court - - - - -	To complete -	27,434
10.	For salaries and expenses connected with the County Courts - - - - -	To complete -	342,281
11.	For salaries and expenses of the Office of Land Registry - - - - -	To complete -	4,028
12.	For the expense of revising barristers in England - - - - -	- - - - -	18,690
13.	For salaries and expenses of the police courts of London and Sheerness - - - - -	To complete -	11,201
14.	For contribution toward the expenses of the metropolitan police, and of the horse patrol, and Thames police, and for the salaries of the Commissioner, Assistant Commissioners, and Receiver - - - - -	To complete -	301,705
15.	For certain expenses connected with the police in counties and boroughs in England and Wales, and with the police in Scotland - - - - -	To complete -	897,648
16.	For the superintendence of convict establishments and for the maintenance of convicts in convict establishments in England and the Colonies - - - - -	To complete -	318,297
17.	For the salaries and expenses of the Commissioners and other officers appointed under the 6th and 7th sections of the Prison Act, 1877, and the expenses of the several prisons in England and Wales to which that Act applies (including a supplementary sum of 19,927 <i>l.</i> ) - - - - -	To complete -	369,658

No.	Sums not exceeding	£
18. For the maintenance of juvenile offenders in reformatory, industrial, and day industrial schools in Great Britain, and for the salaries and expenses of the Inspectors of Reformatories -	To complete -	196,616
19. For the maintenance of criminal lunatics in Broadmoor Criminal Lunatic Asylum, England, and of one criminal lunatic in Bethlem Hospital -	To complete -	19,251
20. For salaries and expenses of the Lord Advocate's department and others connected with criminal proceedings in Scotland, including certain allowances under the Act 15 & 16 Vict. c. 83.	To complete -	50,030
21. For salaries and expenses of the Courts of Law and Justice in Scotland and other legal charges -	To complete -	46,455
22. For salaries and expenses of the offices in Her Majesty's General Register House, Edinburgh -	To complete -	27,150
23. For the expenses of the Prison Commissioners for Scotland, and of the prisons under their control, including the maintenance of criminal lunatics and the preparation of judicial statistics (including a supplementary sum of 26,584 <i>l.</i> ) -	To complete -	87,571
24. For the expense of criminal prosecutions and other law charges in Ireland, including certain allowances under the Act 15 & 16 Vict. c. 83.	To complete -	64,746
25. For salaries and expenses of the Chancery Division (excluding the Land Judges' offices) of the High Court of Justice and of the Court of Appeal in Ireland -	To complete -	28,627
26. For salaries and expenses of the Queen's Bench, Common Pleas, and Exchequer Divisions of Her Majesty's High Court of Justice in Ireland, including provision for certain officers of the Supreme Court of Judicature in Ireland, and for the trial of election petitions -	To complete -	21,209
27. For the salaries and expenses of the Land Judges' offices in the Chancery Division of Her Majesty's High Court of Justice in Ireland -	To complete -	8,521
28. For the salaries and expenses of the Principal and District Registries of the Probate and Matrimonial Division of Her Majesty's High Court of Justice in Ireland, including certain officers of the court -	To complete -	8,642
29. For salaries and incidental expenses of the Court of Bankruptcy in Ireland -	To complete -	7,638
30. For salaries and expenses of the Admiralty Court Registry in Ireland -	To complete -	1,245
31. For salaries and expenses of the Office for the Registration of Deeds in Ireland -	To complete -	14,695
32. For salaries and expenses in the Office for the Registration of Judgments in Ireland -	To complete -	2,155
33. For the salaries, allowances, and expenses of various county court officers, and of magistrates in Ireland, and of the revising barristers of the city of Dublin -	To complete -	61,522
34. For salaries and expenses of the Commissioners of Police, of the police courts and of the metropolitan police establishment of Dublin -	To complete -	103,562
35. For the expenses of the constabulary force in Ireland -	To complete -	754,46
36. For the expense of the superintendence of prisons, and of the maintenance of prisoners in prisons in Ireland, and of the registration of habitual criminals -	To complete -	109,200
37. For the expenses of reformatory and industrial schools in Ireland -	To complete -	68,013
38. For the maintenance of criminal lunatics in Dundrum Criminal Lunatic Asylum, Ireland -	To complete -	5,086
TOTAL CIVIL SERVICES, CLASS III. -	£	4,471,581

## SCHEDULE (B.)—PART 5.

## CIVIL SERVICES.—CLASS IV.

SCHEDULE of SUMS granted to defray the charges of the several CIVIL SERVICES herein particularly mentioned, which will come in course of payment during the year ending on the 31st day of March 1881; viz. :—

No.		Sums not exceeding.	
		£	
1.	For public education in England and Wales, including the expenses of the Education Office in London - - -	To complete -	1,566,077
2.	For salaries and expenses of the Department of Science and Art, and of the establishments connected therewith (including a supplementary sum of 6,234l.) - - -	To complete -	226,002
3.	For salaries and expenses of the British Museum, including the amount required for furniture, fittings, &c., and for salaries and expenses of the Natural History Museum at South Kensington - - -	To complete -	68,257
4.	For salaries and expenses of the National Gallery - - -	To complete -	12,974
5.	For salaries and expenses of the National Portrait Gallery - - -	To complete -	1,790
6.	For grants in aid of the expenditure of certain learned societies in Great Britain and Ireland - - -	To complete -	9,050
7.	For salaries and expenses of the University of London - - -	To complete -	8,126
8.	For preparing an account of the scientific results of the expedition of Her Majesty's ship "Challenger" in 1873, 1874, 1875, and 1876, to investigate the physical and biological conditions of the great ocean basins, and of arranging the collections made during the expedition - - -	To complete -	3,300
9.	For the salaries and expenses of the Royal Commission appointed in connection with the International Exhibitions at Sydney and Melbourne - - -	To complete -	1,720
10.	For public education in Scotland - - -	To complete -	244,203
11.	For grants to Scottish universities - - -	To complete -	13,819
12.	For the annuity to the Board of Trustees of manufactures in Scotland, in discharge of equivalents under the Treaty of Union, to be applied in maintenance of the National Gallery, School of Art and Museum of Antiquities, Scotland, and for the exhibition of the Torrie Collection of Works of Art, and for other purposes - - -	To complete -	1,500
13.	For public education under the Commissioners of National Education in Ireland - - -	To complete -	407,366
14.	For the salaries and expenses of the National School Teachers' Superannuation Office, Dublin - - -	To complete -	1,359
15.	For the salary and expenses of the Office of the Commissioners of Education in Ireland appointed for the regulation of endowed schools - - -	To complete -	440
16.	For salaries and expenses of the National Gallery of Ireland, and for the purchase of pictures - - -	To complete -	1,739
17.	For expenses of the Queen's University in Ireland - - -	To complete -	3,808
18.	In aid of the expenses of the Queen's Colleges in Ireland - - -	To complete -	10,423
19.	In aid of the expenses of the Royal Irish Academy, &c. - - -	To complete -	1,500
TOTAL CIVIL SERVICES, CLASS IV. - £			<u>2,583,458</u>

## SCHEDULE (B.)—PART 6.

## CIVIL SERVICES.—CLASS V.

SCHEDULE of SUMS granted to defray the charges of the several CIVIL SERVICES herein particularly mentioned, which will come in course of payment during the year ending on the 31st day of March 1881; viz. :—

No.	Sums not exceeding	
	£	
1. For expenses of Her Majesty's embassies and missions abroad -	To complete -	144,910
2. For consular establishments abroad, and for other expenditure chargeable on the Consular Vote - - - -	To complete -	186,667
3. In aid of colonial local revenue, and for the salaries and allowances of governors, &c., and for other charges connected with the colonies, including expenses incurred under the Pacific Islanders Protection Act, 1875 - - - -	To complete -	28,819
4. For certain non-effective charges connected with the Orange River Territory and the island of St. Helena - - - -	To complete -	1,705
5. For salaries and expenses of the three representatives of Her Majesty's Government on the Council of Administration of the Suez Canal Company - - - -	To complete -	1,170
6. For expenses of the mixed commissions established under the treaties with foreign powers for suppressing the traffic in slaves, and of other establishments in connection with that object, including the Muscat subsidy - - - -	To complete -	5,307
7. For tonnage bounties, bounties on slaves, costs of captors, &c., and expenses of the Liberated African Department - - - -	To complete -	8,407
8. For a grant in aid of the revenue of the Island of Cyprus; such sum to be in substitution for the sums granted in session I. of 1880, and in the current session, for Cyprus Police - - - -	- - - -	20,000
9. For subsidies to telegraph companies - - - -	To complete -	17,500
TOTAL CIVIL SERVICES, CLASS V. - £		<u>414,485</u>

## SCHEDULE (B.)—PART 7.

## CIVIL SERVICES.—CLASS VI.

SCHEDULE of SUMS granted to defray the charges of the several CIVIL SERVICES herein particularly mentioned, which will come in course of payment during the year ending on the 31st day of March 1881; viz. :—

No.	Sums not exceeding	
	£	
1. For superannuation and retired allowances to persons formerly employed in the public service, and for compassionate or other special allowances and gratuities awarded by the Commissioners of Her Majesty's Treasury - - - -	To complete -	246,175
2. For pensions to masters and seamen of the merchant service, and to their widows and children - - - -	To complete -	21,050
3. For the relief of distressed British seamen abroad - - - -	To complete -	24,300
4. In aid of the local cost of maintenance of pauper lunatics in England and Wales - - - -	- - - -	410,000

No.		Sums not exceeding	
			£
5.	In aid of the local cost of maintenance of pauper lunatics in Scotland	- - -	74,479
6.	In aid of the local cost of maintenance of pauper lunatics in Ireland	To complete -	25,832
7.	For the support of certain hospitals and infirmaries in Ireland	To complete -	12,758
8.	For making good the deficiency arising from payments for interest to savings banks and friendly societies	- - -	122,306
9.	For miscellaneous, charitable, and other allowances in Great Britain	To complete -	2,964
10.	For certain miscellaneous, charitable, and other allowances in Ireland	To complete -	3,119
TOTAL CIVIL SERVICES, CLASS VI.			<u>942,983</u>

### SCHEDULE (B.)—PART 8.

#### CIVIL SERVICES.—CLASS VII.

SCHEDULE of SUMS granted to defray the charges of the several CIVIL SERVICES herein particularly mentioned, which will come in course of payment during the year ending on the 31st day of March 1881; viz. :—

No.		Sums not exceeding	
			£
1.	For salaries and incidental expenses of temporary commissions and committees, including special inquiries	To complete -	27,411
2.	For certain miscellaneous expenses	To complete -	4,829
TOTAL CIVIL SERVICES, CLASS VII.			<u>32,240</u>

### SCHEDULE (B.)—PART 9.

#### REVENUE DEPARTMENTS, &c.

SCHEDULE of SUMS granted to defray the charges of the several REVENUE DEPARTMENTS, &c. herein particularly mentioned, which will come in course of payment during the year ending on the 31st day of March 1881; viz. :—

No.		Sums not exceeding	
			£
1.	For salaries and expenses of the Customs Department, including a supplementary sum of 8,100l.	To complete -	868,777
2.	For salaries and expenses of the Inland Revenue Department, including a supplementary sum of 55,000l.	To complete -	1,701,032
3.	For salaries and expenses of the Post Office services, the expenses of Post Office savings banks, and Government annuities and insurances, and the collection of the Post Office revenue	To complete -	3,010,404
4.	For the Post Office packet service	To complete -	510,468
5.	For salaries and expenses of the Post Office telegraph service	To complete -	860,736
TOTAL REVENUE DEPARTMENTS			<u>6,951,417</u>

## SCHEDULE (B.)—PART 10.

## GREENWICH HOSPITAL AND SCHOOL.

Advances during the year ending on the 31st day of March 1881 for defraying the expenses of Greenwich Hospital and School	- - -	To complete	-	<u>£ 109,645</u>
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## SCHEDULE (B.)—PART 11.

## EXCHEQUER BONDS.

To pay off and discharge Exchequer Bonds which became due and payable during the year ending on the 31st day of March 1881	- - -		<u>£ 3,200,000</u>
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## CHAP. 41.

*Burial Laws Amendment Act, 1880.*

## ABSTRACT OF THE ENACTMENTS.

1. *After passing of Act, notice may be given that burial will take place in churchyard or graveyard without the rites of the Church of England.*
2. *Paupers.*
3. *Time of burial to be stated, subject to variation.*
4. *Burial to take place accordingly.*
5. *Regulations and fees.*
6. *Burial may be with or without religious service.*
7. *Burials to be conducted in a decent and orderly manner and without obstruction.*
8. *Powers for prevention of disorder.*
9. *Act not to give right of burial where no previous right existed.*
10. *Burials under Act to be registered.*
11. *Order of coroner or certificate of registrar to be delivered to relative, &c. instead of to person who buries.*
12. *Liberty to use burial service of Church of England in unconsecrated ground.*
13. *Relief of clergy of Church of England from penalties in certain cases.*
14. *Saving as to ministers of Church of England.*
15. *Application of Act.*
16. *Short titles of Act.*

## SCHEDULES.

### An Act to amend the Burial Laws. (7th September 1880.)

WHEREAS it is expedient to amend the law of burial in England and the Channel Islands:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. After the passing of this Act any relative, friend, or legal representative having the charge

of or being responsible for the burial of a deceased person may give forty-eight hours notice in writing, indorsed on the outside "Notice of Burial," to, or leave or cause the same to be left at the usual place of abode of the rector, vicar, or other incumbent, or in his absence the officiating minister in charge of any parish or ecclesiastical district or place, or any person appointed by him to receive such notice, that it is intended that such deceased person shall be buried within the churchyard or graveyard of such parish or ecclesiastical district or place without the performance, in the manner prescribed by law, of the service for the burial of the dead according

to the rites of the Church of England, and after receiving such notice no rector, vicar, incumbent, or officiating minister shall be liable to any censure or penalty, ecclesiastical or civil, for permitting any such burial as aforesaid. Such notice shall be in writing, plainly signed with the name and stating the address of the person giving it, and shall be in the form or to the effect of Schedule (A.) annexed to this Act.

The word "graveyard" in this Act shall include any burial ground or cemetery vested in any burial board, or provided under any Act relating to the burial of the dead, in which the parishioners or inhabitants of any parish or ecclesiastical district have rights of burial; and in the case of any such burial ground or cemetery, if a chaplain is appointed to perform the burial service of the Church of England therein, notice under this Act shall be addressed to such chaplain, but the same shall be given to or left at the office of the clerk of the burial board, if any, in whom any such burial ground or cemetery may be vested: Provided also, that it shall be lawful for the proprietors or directors of any proprietary cemetery or burial ground to make such byelaws or regulations as may be necessary for enabling any burial to take place therein in accordance with the provisions of this Act, any enactment to the contrary notwithstanding.

2. Such notice, in the case of any poor person deceased, whom the guardians of any parish or union are required or authorised by law to bury, may be given to the rector, vicar, or other incumbent in manner aforesaid, and also to the master of any workhouse in which such poor person may have died, or otherwise to the said guardians, by the husband, wife, or next of kin of such poor person, who, for the purposes of this Act, shall be deemed to be the person having the charge of the burial of such deceased poor person; and in any such case it shall be the duty of the said guardians to permit the body of such deceased person to be buried in the manner provided by this Act.

3. Such notice shall state the day and hour when such burial is proposed to take place, and in case the time so stated be inconvenient on account of some other service having been, previously to the receipt of such notice, appointed to take place in such churchyard or graveyard, or the church or chapel connected therewith, or on account of any byelaws or regulations lawfully in force in any graveyard limiting the times at which burials may take place in such graveyard, the person receiving the notice shall, unless some other day or time shall be mutually arranged within twenty-four hours from the time of giving or leaving such notice, signify in writing, to be delivered to or left at the address or usual place

of abode of the person from whom such notice has been received, or at the house where the deceased person is lying, at which hour of the day named in the notice, or (in case of burial in a churchyard, if such day shall be a Sunday, Good Friday, or Christmas Day) of the day next following, such burial shall take place; and it shall be lawful for the burial to take place, and it shall take place, at the hour so appointed or mutually arranged, and in other respects in accordance with the notice: Provided that, unless it shall be otherwise mutually arranged, the time of such burial shall be between the hours of ten o'clock in the forenoon and six o'clock in the afternoon if the burial be between the first day of April and the first day of October, and between the hours of ten o'clock in the forenoon and three o'clock in the afternoon if the burial be between the first day of October and the first day of April: Provided also, that no such burial shall take place in any churchyard on Sunday, or on Good Friday or Christmas Day, if any such day being proposed by the notice shall be objected to in writing for a reason assigned by the person receiving such notice.

4. When no such intimation of change of hour is sent to the person from whom the notice has been received, or left at the house where the deceased person is lying, the burial shall take place in accordance with and at the time specified in such notice.

5. All regulations as to the position and making of the grave which would be in force in such churchyard or graveyard in the case of persons interred therein with the service of the Church of England shall be in force as to burials under this Act; and any person who, if the burial had taken place with the service of the Church of England, would have been entitled by law to receive any fee, shall be entitled, in case of a burial under this Act, to receive the like fee in respect thereof.

6. At any burial under this Act all persons shall have free access to the churchyard or graveyard in which the same shall take place. The burial may take place, at the option of the person so having the charge of or being responsible for the same as aforesaid, either without any religious service, or with such Christian and orderly religious service at the grave, as such person shall think fit; and any person or persons who shall be thereunto invited, or be authorised by the person having the charge of or being responsible for such burial, may conduct such service or take part in any religious act thereat. The words "Christian service" in this section shall include every religious service used by any church, denomination, or person professing to be Christian.

7. All burials under this Act, whether with or without a religious service, shall be conducted in a decent and orderly manner; and every person guilty of any riotous, violent, or indecent behaviour at any burial under this Act, or wilfully obstructing such burial or any such service as aforesaid thereat, or who shall, in any such churchyard or graveyard as aforesaid, deliver any address, not being part of or incidental to a religious service permitted by this Act, and not otherwise permitted by any lawful authority, or who shall, under colour of any religious service or otherwise, in any such churchyard or graveyard, wilfully endeavour to bring into contempt or obloquy the Christian religion, or the belief or worship of any Church or denomination of Christians, or the members or any minister of any such church or denomination, or any other person, shall be guilty of a misdemeanor.

8. All powers and authorities now existing by law for the preservation of order, and for the prevention and punishment of disorderly behaviour in any churchyard or graveyard, may be exercised in any case of burial under this Act in the same manner and by the same persons as if the same had been a burial according to the rites of the Church of England.

9. Nothing in this Act shall authorise the burial of any person in any place where such person would have had no right of interment if this Act had not passed, or without performance of any express condition on which, by the terms of any trust deed, any right of interment in any burial ground vested in trustees under such trust deed, not being the churchyard or graveyard, or part of the churchyard or graveyard, of the parish or ecclesiastical district in which the same is situate, may have been granted.

10. When any burial has taken place under this Act, the person so having the charge of or being responsible for such burial as aforesaid shall on the day thereof, or the next day thereafter, transmit a certificate of such burial, in the form or to the effect of Schedule (B.) annexed to this Act, to the rector, vicar, incumbent, or other officiating minister in charge of the parish or district in which the churchyard or graveyard is situate or to which it belongs, or in the case of any burial ground or cemetery vested in any burial board to the person required by law to keep the register of burials in such burial ground or cemetery, who shall thereupon enter such burial in the register of burials of such parish or district, or of such burial ground or cemetery, and such entry shall form part thereof. Such entry, instead of stating by whom the ceremony of burial was performed, shall state by whom the same has been certified under this Act. Any

person who shall wilfully make any false statement in such certificate, and any rector, vicar, or minister, or other such person as aforesaid, receiving such certificate, who shall refuse or neglect duly to enter such burial in such register as aforesaid, shall be guilty of a misdemeanor.

11. Every order of a coroner or certificate of a registrar given under the provisions of section seventeen of the Births and Deaths Registration Act, 1874, shall, in the case of a burial under that Act, be delivered to the relative, friend, or legal representative of the deceased, having the charge of or being responsible for the burial, instead of being delivered to the person who buries or performs any funeral or religious service for the burial of the body of the deceased; and any person to whom such order or certificate shall have been given by the coroner or registrar who fails so to deliver or cause to be delivered the same shall be liable to a penalty not exceeding forty shillings, and any such relative, friend, or legal representative so having charge of or being responsible for the burial of the body of any person buried under this Act as aforesaid, as to which no order or certificate under the same section of the said Act shall have been delivered to him, shall, within seven days after the burial, give notice thereof in writing to the registrar, and if he fail so to do shall be liable to a penalty not exceeding ten pounds.

12. No minister in holy orders of the Church of England shall be subject to any censure or penalty for officiating with the service prescribed by law for the burial of the dead according to the rites of the said church in any unconsecrated burial ground or cemetery or part of a burial ground or cemetery, or in any building thereon, in any case in which he might have lawfully used the same service, if such burial ground or cemetery or part of a burial ground or cemetery had been consecrated. The relative, friend, or legal representative having charge of or being responsible for the burial of any deceased person who had a right of interment in any such unconsecrated ground vested in any burial board, or provided under any Act relating to the burial of the dead, shall be entitled if he think fit, to have such burial performed therein according to the rites of the Church of England by any minister of the said church who may be willing to perform the same.

13. From and after the passing of this Act, it shall be lawful for any minister in holy orders of the Church of England authorised to perform the burial service, in any case where the office for the burial of the dead according to the rites of the Church of England may not be used, and in any other case at the request of the relative, friend, or

legal representative having the charge of or being responsible for the burial of the deceased, to use at the burial such service, consisting of prayers taken from the Book of Common Prayer and portions of Holy Scripture, as may be prescribed or approved of by the Ordinary, without being subject to any ecclesiastical or other censure or penalty.

14. Save as in this Act expressly provided as to ministers of the Church of England, nothing herein contained shall authorise or enable any such minister who shall not have become a declared member of any other Church or denomi-

nation, or have executed a deed of relinquishment under the Clerical Disabilities Act, 1870, to do any act which he would not by law have been authorised or enabled to do if this Act had not passed, or to exempt him from any censure or penalty in respect thereof.

15. This Act shall extend to the Channel Islands, but shall not apply to Scotland or to Ireland.

16. This Act may be cited as the Burial Laws Amendment Act, 1880.

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SCHEDULES to which this Act refers.

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SCHEDULE (A.)

*Notice of Burial.*

I , of , being the relative [or friend, or legal representative, as the case may be, describing the relation if a relative,] having the charge of or being responsible for the burial of A.B., of , who died at in the parish of , on the day of , do hereby give you notice that it is intended by me that the body of the said A.B. shall be buried within the [here describe the churchyard or graveyard in which the body is to be buried] on the day of , at the hour of , without the performance in the manner prescribed by law of the service for

the burial of the dead according to the rites of the Church of England, and I give this notice pursuant to the Burial Laws Amendment Act, 1880.

To the Rector [or, as the case may be,] of .

SCHEDULE (B.)

I , of , the person having the charge of (or being responsible for) the burial of the deceased, do hereby certify that on the day of , A.B. of , aged , was buried in the churchyard [or graveyard] of the parish [or district] of .

To the Rector [or, as the case may be] of .

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CHAP. 42.

*Employers' Liability Act, 1880.*

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ABSTRACT OF THE ENACTMENTS.

1. *Amendment of law.*
  2. *Exceptions to amendment of law.*
  3. *Limit of sum recoverable as compensation.*
  4. *Limit of time for recovery of compensation.*
  5. *Money payable under penalty to be deducted from compensation under Act.*
  6. *Trial of actions.*
  7. *Mode of serving notice of injury.*
  8. *Definitions.*
  9. *Commencement of Act.*
  10. *Short title.*
-

**An Act to extend and regulate the Liability of Employers to make Compensation for Personal Injuries suffered by Workmen in their service.**

(7th September 1880.)

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. Where after the commencement of this Act personal injury is caused to a workman

(1.) By reason of any defect in the condition of the ways, works, machinery, or plant connected with or used in the business of the employer ; or

(2.) By reason of the negligence of any person in the service of the employer who has any superintendence entrusted to him whilst in the exercise of such superintendence ; or

(3.) By reason of the negligence of any person in the service of the employer to whose orders or directions the workmen at the time of the injury was bound to conform, and did conform, where such injury resulted from his having so conformed ; or

(4.) By reason of the Act or omission of any person in the service of the employer done or made in obedience to the rules or byelaws of the employer, or in obedience to particular instructions given by any person delegated with the authority of the employer in that behalf ; or

(5.) By reason of the negligence of any person in the service of the employer who has the charge or control of any signal, points, locomotive engine, or train upon a railway,

the workman, or in case the injury results in death, the legal personal representatives of the workman, and any persons entitled in case of death, shall have the same right of compensation and remedies against the employer as if the workman had not been a workman of nor in the service of the employer, nor engaged in his work.

2. A workman shall not be entitled under this Act to any right of compensation or remedy against the employer in any of the following cases ; that is to say,

(1.) Under sub-section one of section one, unless the defect therein mentioned arose from, or had not been discovered or remedied owing to the negligence of the employer, or of some person in the

service of the employer, and entrusted by him with the duty of seeing that the ways, works, machinery, or plant were in proper condition.

(2.) Under sub-section four of section one, unless the injury resulted from some impropriety or defect in the rules, byelaws, or instructions therein mentioned ; provided that where a rule or byelaw has been approved or has been accepted as a proper rule or byelaw by one of Her Majesty's Principal Secretaries of State, or by the Board of Trade, or any other department of the Government, under or by virtue of any Act of Parliament, it shall not be deemed for the purposes of this Act to be an improper or defective rule or byelaw.

(3.) In any case where the workman knew of the defect or negligence which caused his injury, and failed within a reasonable time to give, or cause to be given, information thereof to the employer or some person superior to himself in the service of the employer, unless he was aware that the employer or such superior already knew of the said defect or negligence.

3. The amount of compensation recoverable under this Act shall not exceed such sum as may be found to be equivalent to the estimated earnings, during the three years preceding the injury, of a person in the same grade employed during those years in the like employment and in the district in which the workman is employed at the time of the injury.

4. An action for the recovery under this Act of compensation for an injury shall not be maintainable unless notice that injury has been sustained is given within six weeks and the action is commenced within six months from the occurrence of the accident causing the injury, or, in case of death, within twelve months from the time of death : Provided always, that in case of death the want of such notice shall be no bar to the maintenance of such action if the judge shall be of opinion that there was reasonable excuse for such want of notice.

5. There shall be deducted from any compensation awarded to any workman, or representatives of a workman, or persons claiming by, under, or through a workman in respect of any cause of action arising under this Act, any penalty or part of a penalty which may have been paid in pursuance of any other Act of Parliament to such workman, representatives, or persons in respect of the same cause of action ; and where an action has been brought under this Act by any workman, or the representatives of any workman, or any persons claiming by

under, or through such workman, for compensation in respect of any cause of action arising under this Act, and payment has not previously been made of any penalty or part of a penalty under any other Act of Parliament in respect of the same cause of action, such workman, representatives, or person shall not be entitled thereafter to receive any penalty or part of a penalty under any other Act of Parliament in respect of the same cause of action.

6.—(1.) Every action for recovery of compensation under this Act shall be brought in a county court, but may, upon the application of either plaintiff or defendant, be removed into a superior court in like manner and upon the same conditions as an action commenced in a county court may by law be removed.

(2.) Upon the trial of any such action in a county court before the judge without a jury one or more assessors may be appointed for the purpose of ascertaining the amount of compensation.

(3.) For the purpose of regulating the conditions and mode of appointment and remuneration of such assessors, and all matters of procedure relating to their duties, and also for the purpose of consolidating any actions under this Act in a county court, and otherwise preventing multiplicity of such actions, rules and regulations may be made, varied, and repealed from time to time in the same manner as rules and regulations for regulating the practice and procedure in other actions in county courts.

“County court” shall, with respect to Scotland, mean the “Sheriff’s Court,” and shall, with respect to Ireland, mean the “Civil Bill Court.”

In Scotland any action under this Act may be removed to the Court of Session at the instance of either party, in the manner provided by, and subject to the conditions prescribed by, section nine of the Sheriff Courts (Scotland) Act, 1877.

In Scotland the sheriff may conjoin actions arising out of the same occurrence or cause of action, though at the instance of different parties and in respect of different injuries.

7. Notice in respect of an injury under this Act shall give the name and address of the person injured, and shall state in ordinary language the cause of the injury and the date at which it was sustained, and shall be served on the employer, or, if there is more than one employer, upon one of such employers.

The notice may be served by delivering the

same to or at the residence or place of business of the person on whom it is to be served.

The notice may also be served by post by a registered letter addressed to the person on whom it is to be served at his last known place of residence or place of business; and, if served by post, shall be deemed to have been served at the time when a letter containing the same would be delivered in the ordinary course of post; and, in proving the service of such notice, it shall be sufficient to prove that the notice was properly addressed and registered.

Where the employer is a body of persons corporate or unincorporate, the notice shall be served by delivering the same at or by sending it by post in a registered letter addressed to the office, or if there be more than one office, any one of the offices of such body.

A notice under this section shall not be deemed invalid by reason of any defect or inaccuracy therein unless the judge who tries the action arising from the injury mentioned in the notice shall be of opinion that the defendant in the action is prejudiced in his defence by such defect or inaccuracy, and that the defect or inaccuracy was for the purpose of misleading.

8. For the purposes of this Act, unless the context otherwise requires,—

The expression “person who has superintendence entrusted to him” means a person whose sole or principal duty is that of superintendence, and who is not ordinarily engaged in manual labour:

The expression “employer” includes a body of persons corporate or unincorporate:

The expression “workman” means a railway servant and any person to whom the Employers and Workmen Act, 1875, applies.

9. This Act shall not come into operation until the first day of January one thousand eight hundred and eighty-one, which date is in this Act referred to as the commencement of this Act.

10. This Act may be cited as the Employers’ Liability Act, 1880, and shall continue in force till the thirty-first day of December one thousand eight hundred and eighty-seven, and to the end of the then next Session of Parliament, and no longer, unless Parliament shall otherwise determine, and all actions commenced under this Act before that period shall be continued as if the said Act had not expired.

## CHAP. 43.

*Merchant Shipping (Carriage of Grain) Act, 1880.*

## ABSTRACT OF THE ENACTMENTS.

1. *Short title and construction.*
2. *Commencement of Act.*
3. *Obligation to take precautions to prevent grain cargo from shifting.*
4. *Precautions against shifting of grain cargo laden in port in Mediterranean or Black Sea, or on coast of North America.*
5. *Exemption from precautions specified in this Act for ships laden in Mediterranean or Black Sea, or on coast of North America.*
6. *Notice by master of kind and quantity of grain cargo.*
7. *Penalty for false statement in notice.*
8. *Power of Board of Trade for enforcing of Act.*
9. *Prosecution of offences and recovery of penalties.*
10. *Definitions.*
11. *Repeal of 39 & 40 Vict. c. 80. s. 22.*

An Act to provide for the safe carriage  
of Grain Cargoes by Merchant Ship-  
ping. (7th September 1880.)

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. This Act may be cited as the Merchant Shipping (Carriage of Grain) Act, 1880, and shall be construed as one with the Merchant Shipping Act, 1854, and the Acts amending the same, and together with those Acts may be cited as the Merchant Shipping Acts, 1854 to 1880.

2. This Act shall come into operation on the first day of January one thousand eight hundred and eighty-one (which day is in this Act referred to as the commencement of this Act).

3. Where a grain cargo is laden on any British ship all necessary and reasonable precautions (whether prescribed by this Act or not) shall be taken in order to prevent the grain cargo from shifting.

If such precautions have not been taken in the case of any such ship, the master of the ship and any agent of the owner who was charged with the loading of the ship or the sending her to sea, shall each be liable to a penalty not exceeding three hundred pounds, and the owner of the ship shall also be liable to the same penalty, unless he shows that he took all reasonable means to enforce the observance of this section, and was not privy to the breach thereof.

4. Where a British ship laden with a grain cargo at any port in the Mediterranean or Black

Sea is bound to ports outside the Straits of Gibraltar, or where a British ship is laden with a grain cargo on the coast of North America, the following precautions to prevent the grain cargo from shifting shall be adopted ; that is to say,

(a.) There shall not be carried between the decks, or, if the ship has more than two decks, between the main and upper decks, any grain in bulk, except such as may be necessary for feeding the cargo in the hold, and is carried in properly constructed feeders.

(b.) Where grain (except such as may be carried in properly constructed feeders) is carried in bulk in any hold or compartment, and proper provision for filling up the same by feeders is not made, not less than one-fourth of the grain carried in the hold or compartment (as the case may be) shall be in bags supported on suitable platforms laid upon the grain in bulk : Provided that this regulation with respect to bags shall not apply—

(i.) To oats, or cotton seed ; nor

(ii.) To a ship which is a sailing ship of less than four hundred tons registered tonnage, and is not engaged in the Atlantic trade ; nor

(iii.) To a ship laden at a port in the Mediterranean or Black Sea if the ship is divided into compartments which are formed by substantial transverse partitions, and are fitted with longitudinal bulkheads or such shifting boards as hereafter in this section mentioned, and if the ship does not carry more than one-fourth of the grain cargo, and not more than one thousand five hundred quarters, in any one compartment, bin, or division, and provided that each division of the lower hold is fitted with properly constructed feeders from the between decks ; nor

(iv.) To a ship in which the grain cargo does not exceed one-half of the whole cargo of the ship, and the rest of the cargo consists of cotton, wool, flax, barrels, or sacks of flour, or other suitable cargo so stowed as to prevent the grain in any compartment, bin, or division from shifting.

(c.) Where grain is carried in the hold or between the decks, whether in bags or bulk, the hold or the space between the decks shall be divided by a longitudinal bulkhead or by sufficient shifting boards which extend from deck to deck or from the keelson and are properly secured, and if the grain is in bulk are fitted grain-tight with proper fillings between the beams.

(d.) In loading, the grain shall be properly stowed, trimmed, and secured.

In the event of the contravention of this section in the case of any ship, reasonable precautions to prevent the grain cargo of that ship from shifting shall be deemed not to have been taken, and the owner and master of the ship and any agent charged with loading her or sending her to sea shall be liable accordingly to a penalty under this Act.

Provided that nothing in this section shall exempt a person from any liability, civil or criminal, to which he would otherwise be subject for failing to adopt any reasonable precautions which, although not mentioned in this section, are reasonably required to prevent grain cargo from shifting.

5. The precautions required by this Act to be adopted by ships laden with a grain cargo at a port in the Mediterranean or Black Sea, or on the coast of North America, shall not apply to ships loaded in accordance with regulations for the time being approved by the Board of Trade; nor to any ship constructed and loaded in accordance with any plan approved by the Board of Trade.

6. Before a British ship laden with grain cargo at any port in the Mediterranean or Black Sea, bound to ports outside the Straits of Gibraltar, or laden with grain cargo on the coast of North America, leaves her final port of loading, or within forty-eight hours after leaving such port, the master shall deliver or cause to be delivered to the British consular officer, or, if it is in Her Majesty's dominions, to the principal officer of Customs at that port, a notice stating—

(1.) The draught of water and clear side, as defined by section five of the Merchant Shipping Act, 1871, and section four of the Merchant Shipping Act, 1873, of the said ship after the loading of her cargo has been completed at the said last port of loading;

(2.) And also stating the following particulars in respect to the grain cargo; namely,

(a.) The kind of grain and the quantity thereof, which quantity may be stated in cubic feet, or in quarters, or bushels, or in tons weight; and

(b.) The mode in which the grain cargo is stowed; and

(c.) The precautions taken against shifting.

The master shall also deliver a similar notice to the principal collector or other proper officer of Customs in the United Kingdom, together with the report required to be made by the Customs Consolidation Act, 1876, on the arrival of the ship in the United Kingdom.

Every such notice shall be sent to the Board of Trade as soon as practicable by the officer receiving the same.

If the master fails to deliver any notice required by this section he shall be liable to a penalty not exceeding one hundred pounds: Provided always, that the Board of Trade may, by notice published in the London Gazette, or in such other way as it may deem expedient, exempt ships laden at any particular port or any class of such ships from the provisions of this section.

7. Any master of a ship, who in any notice required by this Act wilfully makes any false statement or wilfully omits any material particular shall be liable to a penalty not exceeding one hundred pounds.

8. For the purpose of securing the observance of this Act, any officer having authority in that behalf from the Board of Trade, either general or special, shall have the same power as an inspector appointed under the Merchant Shipping Act, 1854, and shall also have power to inspect any grain cargo, and the mode in which the same is stowed.

9. Every offence punishable under this Act may be prosecuted summarily and every penalty under this Act may be recovered and enforced summarily in like manner as offences and penalties under the Merchant Shipping Act, 1854, and the Acts amending the same.

10. For the purposes of this Act—

The expression "grain" means any corn, rice, paddy, pulse, seeds, nuts, or nut kernels.

The expression "ship laden with a grain cargo" means a ship carrying a cargo of which the portion consisting of grain is more than one-third of the registered tonnage of the ship, and such third shall be computed, where the grain is reckoned in measures of capacity, at the rate of one hundred cubic feet for each ton of registered tonnage, and where the grain is reckoned in

measures of weight, at the rate of two tons weight for each ton of registered tonnage.

11. Section twenty-two of the Merchant Shipping Act, 1876, is hereby repealed as from the commencement of this Act:

Provided that any offence against that section committed before the commencement of this Act may be prosecuted, and the penalty recovered and enforced, in like manner as if the said section had continued to remain in force.

#### CHAP. 44.

#### *Irish Loans Act, 1880.*

##### ABSTRACT OF THE ENACTMENTS.

1. *Short title.*
2. *Explanation of s. 13 of 43 & 44 Vict. c. 14. as to rate of interest and duration of loans.*
3. *Explanation of s. 14 of 43 & 44 Vict. c. 14. as to loans to Harbour Commissioners.*
4. *Provision relating to the Bandon and Kilmacsimon railway or tramway.*
5. *Explanation of s. 7 of 43 & 44 Vict. c. 14.*

An Act to explain and amend Sections Seven, Thirteen, and Fourteen of the Relief of Distress (Ireland) Amendment Act, 1880.

(7th September 1880.)

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as the Irish Loans Act, 1880.

2. In order to remove doubts which have arisen with respect to the meaning of the provisions of section thirteen of the Relief of Distress (Ireland) Amendment Act, 1880, as to the rate of interest and the period of repayment of loans under that section: Be it enacted that,—

Notwithstanding anything contained in section two of the Public Works Loans Act, 1879, and section thirteen of the Relief of Distress (Ireland) Amendment Act, 1880, any loan purporting to be made under the said section thirteen shall be made repayable within such periods and at such rate of interest as are set forth in a Minute of the Treasury made on the sixteenth day of August one thousand eight hundred and seventy-nine with reference to loans to which section two of the Public Works Loans Act, 1879, applies.

3. For the purpose of enabling a loan to be made under the said section thirteen to Harbour

Commissioners, a guarantee may be granted under section fourteen of the Relief of Distress (Ireland) Amendment Act, 1880, and that Act shall have effect as if Harbour Commissioners were mentioned in section fourteen thereof after trustees of any canal or river navigation.

Provided that the presentment sessions held next after every spring assizes for the county of Wicklow, in and for each barony of that county, guaranteeing any loan under the Relief of Distress (Ireland) Amendment Act, 1880, for making, maintaining, or improving the Harbour of Wicklow, pursuant to the Acts in that behalf, may, until such loan shall be repaid, elect one justice, by ballot, from among the justices, and one cesspayer, by ballot, from among the associated cesspayers constituting such sessions, and every justice and cesspayer so elected shall, until the end of the presentment sessions held in and for the same barony next after the then ensuing spring assizes for the said county, be associated with and become a commissioner as if appointed pursuant to the said Acts for the purposes, and with the same estate, rights, powers, privileges, and authorities, as if so appointed; and until such loan shall be repaid the number of commissioners for the purposes of the said Acts shall not be restricted to twelve: Provided, that if during his year of office such justice or cesspayer shall die, resign, or be incapable of acting as such commissioner, then and so often the other commissioners shall, from amongst the justices or associated cesspayers, as the case may be, who constituted the then last presentment sessions in and for such barony, appoint by ballot some other justice or cesspayer as a new commissioner in the place of such deceased, resigned, or inca-

pable commissioner, all whose estate, rights, powers, privileges, and authorities as such commissioner shall vest in such new commissioner in his appointment as aforesaid.

4. Notwithstanding anything contained in the Relief of Distress (Ireland) Amendment Act, 1880, loans under the thirteenth and following sections of the said Act may be made to the railway or tramway from Bandon to Kilmacsimon, and tramway from Ahada to Cloyne and Cloyne to Ballycotton, in the county of Cork, and to the Limavady and Dungiven Railway, in the county of Londonderry, and the railway from

Ballywilliam to New Ross, in the county of Wexford.

5. Any reference in section seven of the Relief of Distress (Ireland) Amendment Act, 1880, to the board of guardians of any union authorised to give out-door relief under the third section of the Relief of Distress (Ireland) Act, 1880, shall be construed to refer to the board of guardians of any union which has at any time been so authorised, and sub-section two of the said section seven shall apply whether the loan contracted was for the purpose of giving out-door relief or for any other purpose.

#### CHAP. 45.

##### *Criminal Law Amendment Act, 1880.*

###### ABSTRACT OF THE ENACTMENTS.

1. *Short title.*
2. *Consent of young person to be no defence.*
3. *Application of Act.*

An Act to amend the Criminal Law as to Indecent Assaults on Young Persons. (7th September 1880.)

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. This Act may be cited for all purposes as the Criminal Law Amendment Act, 1880.

2. It shall be no defence to a charge or indictment for an indecent assault on a young person under the age of thirteen to prove that he or she consented to the act of indecency.

3. This Act shall not apply to Scotland.

#### CHAP. 46.

##### *Universities and College Estates Amendment Act, 1880.*

###### ABSTRACT OF THE ENACTMENTS.

1. *Short title.*
2. *Application of purchase money for land sold by university or college.*
3. *Rebuilding of chancels to be within Act.*
4. *Act to apply to moneys in Court.*
5. *Severance of benefices from headships of colleges.*

###### SCHEDULE.

An Act to amend the Universities and  
College Estates Act, 1858.

(7th September 1880.)

WHEREAS it is expedient to amend the provisions of the Universities and College Estates Act, 1858 :

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. This Act may be cited as the Universities and College Estates Amendment Act, 1880, and this Act and the Universities and College Estates Act, 1858, and the Universities and College Estates Act Extension, 1860, may be cited collectively as the Universities and College Estates Acts, 1858 to 1880.

2.—(1.) The purchase money of land sold by a university or college under the Universities and College Estates Act, 1858, or any other Act amending the same, shall, with the consent of the Copyhold Commissioners, be from time to time applicable by the university or college in the repayment of any money borrowed under any of those Acts, or to any of the purposes to which money so borrowed is applicable under those Acts.

(2.) Where any such purchase money is so applied, the like provision shall be made by the university or college for replacing the same as is by section twenty-eight of the Universities and College Estates Act, 1858, required to be made for the repayment of money borrowed under that Act: Provided that where any such purchase money is applied in repayment of a loan, it shall be replaced within or at the expiration of the period limited for repayment of the loan and upon the terms mentioned in the order of the Copyhold Commissioners by which their consent to the loan is or was evidenced.

(3.) The consent of the Copyhold Commissioners shall be evidenced by an order under their hands and common seal in the form or to the effect set forth in the schedule to this Act.

3. Any moneys applicable under the said Acts to or for any of the purposes mentioned in the

twenty-seventh section of the Universities and College Estates Act, 1858, may also be applied, by and under the authority of the said Copyhold Commissioners, in or towards the restoration or rebuilding of the chancel of any church which the university or college to which such moneys belong may be by law liable to restore or rebuild.

4. The provisions of this Act shall apply as well to moneys which have arisen from any sale, enfranchisement, or exchange of lands belonging to a university or college under and by virtue of the aforesaid Acts, as to moneys belonging solely to any such university or college which may have arisen from the sale, enfranchisement, or exchange of any such lands under any other Act of Parliament, or otherwise howsoever, and which may be now or hereafter standing to the account or credit of any cause or matter in the Supreme Court of Judicature or in Her Majesty's High Court of Justice, or any division thereof, or in the names of trustees nominated in pursuance of any Act of Parliament.

5. And whereas by section seven of the Universities and College Estates Act Extension Act, 1860, and the enactments therein referred to, provision is made for the severance of benefices from headships of colleges by means of the sale of the advowsons of the benefices, and it is expedient that further and better provision be made for such severance: Be it therefore enacted, that where a benefice is by statute or otherwise annexed to the headship of a college as part of the endowment of the headship, and it appears that the endowments of the benefice are sufficient to bear such a charge as is herein-after mentioned, the college may by deed charge the whole or any part of the land or other endowments of the benefice with the payment to the head of the college for the time being of such an annual sum, not exceeding one half of such endowments, as is in the opinion of the Ecclesiastical Commissioners for England and the bishop of the diocese proper and adequate, regard being had to the value of the benefice, the requirements of the college, and the population and other circumstances of the parish, and thereupon the advowson and right of presentation of and in such benefice shall be vested in the college freed and discharged from any trust in favour of the head for the time being.

## SCHEDULE.

1.

*Form of Order authorizing the application of Purchase Money in repayment of Money borrowed.*

## COPYHOLD COMMISSION.

In the matter of the Universities and College Estates Acts, 1858 to 1880, ex parte [here state title of university or college].

Whereas there is now standing in the books of the Governor and Company of the Bank of England, to the credit of the account of the Copyhold Commissioners, ex parte [here state the particular account] the sum of £ [insert the amount of cash or stock], being moneys received from the sale [or enfranchisement, or for equality of exchange, as the case may be] of certain lands belonging to the said university [or college] by virtue of certain orders heretofore issued by the said Commissioners under the provisions of the said Acts:

And whereas by an order [or orders] of the said Commissioners, dated , the said university [or college] was authorized to raise the sum [or sums] of £ for the purpose of [here insert nature of loan].

And whereas there is now owing by the said university [or college] the sum [or sums] of £ , being part of moneys borrowed by the said university [or college] under the above-mentioned orders on the security of their lands; and it has been represented to the said Commissioners that the said first-mentioned sum of £ [or the sum of £ , part of the said first-mentioned sum of £ ] may be properly applied in [or towards] the discharge of the said debt:

Now the said Commissioners, being of opinion that the proposed application of the said money will be advantageous and for the interests of the said university [or college] and their successors, do hereby approve of the same, and do direct that the said sum of £ [or the said sum of £ ] to be paid or raised out of the said sum of £ [or the said sum of £ ] now standing to the credit of the said account, be applied in [or towards] payment of the said debt.

But so nevertheless that the said sum of £ be replaced to the credit of the said account within the period and upon the terms

specified in the order [or orders] authorising the original loan [or loans].

Witness their hands and common seal this day of .

2.<sup>1</sup>

*Form of Order authorizing the application of Purchase Money for improvement purposes [or for loss of Fines through non-renewal of Leases].*

## COPYHOLD COMMISSION.

In the matter of the Universities and College Estates Acts, 1858 to 1880, ex parte [here state title of university or college].

Whereas there is now standing in the books of the Governor and Company of the Bank of England, to the credit of the account of the Copyhold Commissioners, ex parte [here state the particular account] the sum of £ [here insert the amount of cash or stock] being moneys derived from the sale [or enfranchisement, or for equality of exchange, as the case may be] of certain lands belonging to the said university [or college] by virtue of certain orders heretofore issued by the said Commissioners under the provisions of the said Acts:

And whereas a statement has been submitted to the said Commissioners on behalf of the said university [or college], containing a proposal for the application of the said sum of £ [or the sum of £ part of the said sum of £ ] to [here name the purpose to which it is proposed to apply the money] the said application being one within the provisions of the said Acts:

Now the said Commissioners, being of opinion, upon consideration of the circumstances that the proposed application of the said money will be advantageous and for the interests of the said university [or college] and their successors, do hereby direct that the said sum of £ [or the said sum of £ ] to be paid or raised out of the said sum of £ [or the said sum of £ ] now standing to the credit of the said account be applied to the purpose aforesaid.

But so nevertheless that the said sum of £ be replaced to the credit of the said account [here state the period and manner of repayment].

Witness their hands and common seal this day of .

## CHAP. 47.

*Ground Game Act, 1880.*

## ABSTRACT OF THE ENACTMENTS.

1. *Occupier to have a right inseparable from his occupation to kill ground game concurrently with any other person entitled to kill the same on land in his occupation.*
2. *Occupier entitled to kill ground game on land in his occupation not to divest himself wholly of such right.*
3. *All agreements in contravention of right of occupier to destroy ground game void.*
4. *Exemption from game licences.*
5. *Saving clause.*
6. *Prohibition of night shooting, spring traps above ground, or poison.*
7. *As to non-occupier having right of killing game.*
8. *Interpretation clause.*
9. *Exemption from penalties.*
10. *Saving of existing prohibitions.*
11. *Short title.*

An Act for the better protection of  
Occupiers of Land against injury to  
their Crops from Ground Game.  
(7th September 1880.)

WHEREAS it is expedient in the interests of good husbandry, and for the better security of the capital and labour invested by the occupiers of land in the cultivation of the soil, that further provision should be made to enable such occupiers to protect their crops from injury and loss by ground game :

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. Every occupier of land shall have, as incident to and inseparable from his occupation of the land, the right to kill and take ground game thereon, concurrently with any other person who may be entitled to kill and take ground game on the same land : Provided that the right conferred on the occupier by this section shall be subject to the following limitations :

(1.) The occupier shall kill and take ground game only by himself or by persons duly authorised by him in writing ;

(a.) The occupier himself and one other person authorised in writing by such occupier shall be the only persons entitled under this Act to kill ground game with firearms ;

(b.) No person shall be authorised by the occupier to kill or take ground game, except members of his household resident on the land in his occupation, persons in his ordinary service on such land, and any one other person bonâ

fide employed by him for reward in the taking and destruction of ground game ;

(c.) Every person so authorised by the occupier, on demand by any person having a concurrent right to take and kill the ground game on the land or any person authorised by him in writing to make such demand, shall produce to the person so demanding the document by which he is authorised, and in default he shall not be deemed to be an authorised person.

(2.) A person shall not be deemed to be an occupier of land for the purposes of this Act by reason of his having a right of common over such lands ; or by reason of an occupation for the purpose of grazing or pasturage of sheep, cattle, or horses for not more than nine months :

(3.) In the case of moorlands, and unclosed lands (not being arable lands), the occupier and the persons authorised by him shall exercise the rights conferred by this section only from the eleventh day of December in one year until the thirty-first day of March in the next year, both inclusive ; but this provision shall not apply to detached portions of moorlands, or unclosed lands adjoining arable land, where such detached portions of moorlands or unclosed lands are less than twenty-five acres in extent.

2. Where the occupier of land is entitled otherwise than in pursuance of this Act to kill and take ground game thereon, if he shall give to any other person a title to kill and take such ground game, he shall nevertheless retain and have, as incident to and inseparable from such occupation, the same right to kill and take ground game as is declared by section one of this Act. Save as aforesaid, but subject as in section six

hereafter mentioned, the occupier may exercise any other or more extensive right which he may possess in respect of ground game or other game, in the same manner and to the same extent as if this Act had not passed.

3. Every agreement, condition, or arrangement which purports to divest or alienate the right of the occupier as declared, given, and reserved to him by this Act, or which gives to such occupier any advantage in consideration of his forbearing to exercise such right, or imposes upon him any disadvantage in consequence of his exercising such right, shall be void.

4. The occupier and the persons duly authorised by him as aforesaid shall not be required to obtain a licence to kill game for the purpose of killing and taking ground game on land in the occupation of such occupier, and the occupier shall have the same power of selling any ground game so killed by him, or the persons authorised by him, as if he had a licence to kill game: Provided that nothing in this Act contained shall exempt any person from the provisions of the Gun Licence Act, 1870.

5. Where at the date of the passing of this Act the right to kill and take ground game on any land is vested by lease, contract of tenancy, or other contract *bonâ fide* made for valuable consideration in some person other than the occupier, the occupier shall not be entitled under this Act, until the determination of that contract, to kill and take ground game on such land. And in Scotland when the right to kill and take ground game is vested by operation of law or otherwise in some person other than the occupier, the occupier shall not be entitled by virtue of this Act to kill or take ground game during the currency of any lease or contract of tenancy under which he holds at the passing of this Act, or during the currency of any contract made *bonâ fide* for valuable consideration before the passing of this Act whereby any other person is entitled to take and kill ground game on the land.

For the purposes of this Act, a tenancy from year to year, or a tenancy at will, shall be deemed to determine at the time when such tenancy would by law become determinable if notice or

warning to determine the same were given at the date of the passing of this Act.

Nothing in this Act shall affect any special right of killing or taking ground game to which any person other than the landlord, lessor, or occupier may have become entitled before the passing of this Act by virtue of any franchise, charter, or Act of Parliament.

6. No person having a right of killing ground game under this Act or otherwise shall use any firearms for the purpose of killing ground game between the expiration of the first hour after sunset and the commencement of the last hour before sunrise; and no such person shall, for the purpose of killing ground game, employ spring traps except in rabbit holes, nor employ poison; and any person acting in contravention of this section shall, on summary conviction, be liable to a penalty not exceeding two pounds.

7. Where a person who is not in occupation of land has the sole right of killing game thereon (with the exception of such right of killing and taking ground game as is by this Act conferred on the occupier as incident to and inseparable from his occupation) such person shall, for the purpose of any Act authorising the institution of legal proceedings by the owner of an exclusive right to game, have the same authority to institute such proceedings as if he were such exclusive owner, without prejudice nevertheless to the right of the occupier conferred by this Act.

8. For the purposes of this Act—

The words "ground game" mean hares and rabbits.

9. A person acting in accordance with this Act shall not thereby be subject to any proceedings or penalties in pursuance of any law or statute.

10. Nothing in this Act shall authorise the killing or taking of ground game on any days or seasons, or by any methods, prohibited by any Act of Parliament in force at the time of the passing of this Act.

11. This Act may be cited for all purposes as the Ground Game Act, 1880.

#### CHAP. 48.

#### *Expiring Laws Continuance Act, 1880.*

##### ABSTRACT OF THE ENACTMENTS.

1. *Short title.*
2. *Continuance of Acts in schedule.*

##### SCHEDULE.

An Act to continue various expiring  
Laws. (7th September 1880.)

WHEREAS the several Acts mentioned in column one of the schedule to this Act are, to the extent specified in column two of that schedule, limited to expire on the thirty-first day of December one thousand eight hundred and eighty:

And whereas it is expedient to provide for the continuance as in this Act mentioned of such Acts, and of the enactments amending the same:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal,

and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as the Expiring Laws Continuance Act, 1880.

2. The Acts mentioned in column one of the schedule to this Act, in so far as they are temporary in their duration, shall, to the extent in column two of the said schedule mentioned, be continued until the thirty-first day of December one thousand eight hundred and eighty-one, and any enactments amending or affecting the enactments continued by this Act shall, in so far as they are temporary in their duration, be continued in like manner.

SCHEDULE.

1. Original Acts.	2. How far continued.	3. Amending Acts.
(1) 5 & 6 Will. 4. c. 27. Linen, Hempen, Cotton, and other Manufactures (Ireland).	The whole Act so far as it is not repealed.	3 & 4 Vict. c. 91. (except ss. 18 and 23). 5 & 6 Vict. c. 68. 7 & 8 Vict. c. 47. 30 & 31 Vict. c. 60.
(2) 3 & 4 Vict. c. 89. Poor Rates, Stock in Trade Exemption.	The whole Act.	—
(3) 4 & 5 Vict. c. 35. Copyhold, Inclosure, and Tithe Commissioners.	So much as relates to the appointment of and the period for holding office by Commissioners and other officers.	14 & 15 Vict. c. 53. 25 & 26 Vict. c. 73.
(4) 4 & 5 Vict. c. 59. Application of Highway Rates to Turnpike Roads.	The whole Act.	—
(5) 10 & 11 Vict. c. 32. Landed Property Improvement (Ireland).	As to powers of Commissioners -	12 & 13 Vict. c. 59. 13 & 14 Vict. c. 31. 25 & 26 Vict. c. 29. 29 & 30 Vict. c. 40.
(6) 10 & 11 Vict. c. 98. Ecclesiastical Jurisdiction.	As to provisions continued by 21 & 22 Vict. c. 50.	—
(7) 11 & 12 Vict. c. 32. County Cess (Ireland).	The whole Act - - -	20 & 21 Vict. c. 7.
(8) 14 & 15 Vict. c. 104. Episcopal and Capitular Estates Management.	The whole Act so far as it is not repealed.	17 & 18 Vict. c. 116. 21 & 22 Vict. c. 94. 22 & 23 Vict. c. 46. 23 & 24 Vict. c. 124. 31 & 32 Vict. c. 114. s. 10.

1. Original Acts.	2. How far continued.	3. Amending Acts.
(9) 23 & 24 Vict. c. 19. Dwellings for Labouring Classes (Ireland).	The whole Act.	—
(10) 24 & 25 Vict. c. 109. Salmon Fishery (England) Act.	As to appointment of inspectors, s. 31.	—
(11) 25 & 26 Vict. c. 97. Salmon Fisheries (Scotland).	As to the powers of Commissioners, &c.	26 & 27 Vict. c. 50. 27 & 28 Vict. c. 118.
(12) 26 & 27 Vict. c. 105. Promissory Notes.	The whole Act.	—
(13) 27 & 28 Vict. c. 20. Promissory Notes and Bills of Exchange (Ireland).	The whole Act.	—
(14) 28 & 29 Vict. c. 46. Militia Ballots Suspension.	The whole Act.	—
(15) 28 & 29 Vict. c. 83. Locomotives on Roads.	The whole Act so far as it is not repealed.	41 & 42 Vict. c. 58. 41 & 42 Vict. c. 77. (Part II.)
(16) 29 & 30 Vict. c. 52. Prosecution Expenses.	The whole Act.	—
(17) 32 & 33 Vict. c. 42. Irish Church	So much as relates to the period for holding office by Commissioners and officers (s. 9).	—
(18) 34 & 35 Vict. c. 87. Sunday Observance Prosecutions.	The whole Act.	—
(19) 35 & 36 Vict. c. 33. Parliamentary and Municipal Elections (Ballot).	The whole Act - - -	38 & 39 Vict. c. 40. (Municipal Elections.) 38 & 39 Vict. c. 84. } 41 & 42 Vict. c. 41. } (Returning Officers Expenses.)
(20) 38 & 39 Vict. c. 48. Police Expenses	The whole Act.	—
(21) 39 & 40 Vict. c. 21. Juries (Ireland).	The whole Act.	—

# A T A B L E

OF

All the STATUTES passed in the First Session of the Twenty-second Parliament of the United Kingdom of Great Britain and Ireland.

43 & 44 VICTORIA.—A.D. 1880.

## PUBLIC GENERAL ACTS.

1. An Act to appoint Public Works Loan Commissioners; to grant Money for the purpose of Loans by the Public Works Loan Commissioners and the Commissioners of Public Works in Ireland; and for other purposes relating to Loans by those Commissioners - Page 3
2. An Act to amend the Glebe Loan Acts (Ireland) - - - - - 6
3. An Act to apply the sum of Four million nine hundred and twenty-five thousand three hundred and twenty pounds out of the Consolidated Fund to the service of the year ending on the thirty-first day of March one thousand eight hundred and eighty-one - 7
4. An Act to provide for the appointment of Judicial Factors in Sheriff Courts in Scotland - - - - - 7
5. An Act to make provision for borrowing in respect of certain County Bridges - - 9
6. An Act to amend the Representation of the People (Scotland) Act, 1868 - - 10
7. An Act to extend the Union Assessment Committee Acts to single parishes under separate Boards of Guardians - - - - 10
8. An Act to provide for the raising of Loans on behalf of the Isle of Man - - - - 11
9. An Act to remove doubts as to the meaning of Expressions relative to Time occurring in Acts of Parliament, deeds, and other legal instruments - - - - - 14
10. An Act to amend the Law respecting the Manner of passing Grants under the Great Seal, and respecting Officers connected therewith - - - - - 14
11. An Act to authorise the Extension and further Limitation of the Tenures of certain University and College Emoluments limited or to be limited by Orders of the Oxford and Cambridge Commissioners - - - 15
12. An Act to continue certain Turnpike Acts, and to repeal certain other Turnpike Acts; and for other purposes connected therewith - - - - - Page 17
13. An Act to amend the Law in Ireland relating to the Registration of Births and Deaths - 22
14. An Act to amend the Relief of Distress (Ireland) Act, 1880; and for other purposes relating thereto - - - - - 34
15. An Act further to amend the Industrial Schools Act, 1866, and the Industrial Schools Act (Ireland), 1868 - - - - - 39
16. An Act to amend the Law relating to the Payment of Wages and Rating of Merchant Seamen - - - - - 39
17. An Act to make provision for Holidays in the Customs and Inland Revenue Offices in Scotland - - - - - 43
18. An Act to amend the Merchant Shipping Act, 1854 - - - - - 43
19. An Act to consolidate Enactments relating to certain Taxes and Duties under the management of the Board of Inland Revenue - 44
20. An Act to repeal the Duties on Malt, to grant and alter certain duties of Inland Revenue, and to amend the Laws in relation to certain other duties - - - - 95
21. An Act to raise the sum of One million five hundred thousand pounds by Exchequer Bonds, Exchequer Bills, or Treasury Bills, for the service of the year ending on the thirty-first day of March one thousand eight hundred and eighty-one - - - - - 110
22. An Act to amend the Merchant Shipping Act, 1854, so far as regards certain Fees and Expenses and Sums receivable and payable by the Board of Trade - - - - - 111

23. An Act to make further provision as to Byelaws respecting the attendance of Children at School under the Elementary Education Acts - Page 112
24. An Act to consolidate and amend the Law relating to the Manufacture and sale of Spirits - 114
25. An Act for further amending the Acts relating to the raising of Money by the Metropolitan Board of Works; and for other purposes relating thereto - - - 154
26. An Act to extend to Scotland the Facilities for effecting Policies of Assurance for the Benefit of Married Women and Children now in force in England and Ireland - - 161
27. An Act to amend the Law relating to the powers of Drainage Boards in Ireland to construct Works outside the limits of their Districts - - - - 162
28. An Act for taking the Census in Ireland 163
29. An Act to amend the Courts of Justice Building Act, 1865 - - - - 165
30. An Act to apply the sum of Ten million eight hundred and eighteen thousand two hundred and seventy-four pounds out of the Consolidated Fund to the service of the year ending on the thirty-first day of March one thousand eight hundred and eighty-one - - - 167
31. An Act to amend the Railways Construction Facilities Act, 1864 - - - - 167
32. An Act to render valid certain Orders in Bastardy - - - - 168
33. An Act relating to Post Office Money Orders - - - - 169
34. An Act to abolish Imprisonment for Debt, and to provide for the better Punishment of Fraudulent Debtors in Scotland; and for other purposes - - - - 172
35. An Act to amend the Laws relating to the Protection of Wild Birds - - - 176
36. An Act to amend the Savings Banks Acts - - - - 178
37. An Act for taking the Census of England 181
38. An Act for taking the Census of Scotland 184
39. An Act to confer jurisdiction in Lunacy upon the County Courts in Ireland in certain cases - - - - 188
40. An Act to apply a sum out of the Consolidated Fund to the service of the year ending on the thirty-first day of March one thousand eight hundred and eighty-one, and to appropriate the Supplies granted in this Session of Parliament - - - - 189
41. An Act to amend the Burial Laws - 201
42. An Act to amend and regulate the Liability of Employers to make Compensation for Personal Injuries suffered by Workmen in their service - - - - Page 204
43. An Act to provide for the safe carriage of Grain Cargoes by Merchant Shipping - 207
44. An Act to explain and amend Sections Seven, Thirteen, and Fourteen of the Relief of Distress (Ireland) Amendment Act, 1880 209
45. An Act to amend the Criminal Law as to Indecent Assaults on Young Persons - 210
46. An Act to amend the Universities and College Estates Act, 1858 - - - 210
47. An Act for the better protection of Occupiers of Land against injury to their Crops from Ground Game - - - - 213
48. An Act to continue various expiring Laws - - - - 214
- 
- The Acts contained in the following List, being PUBLIC ACTS of a Local Character, are placed amongst the LOCAL AND PERSONAL ACTS.
- iii. An Act to confirm a Provisional Order under the Drainage and Improvement of Lands (Ireland) Act, 1863, and the Acts amending the same.
- xxxiii. An Act to confirm a Provisional Order of the Local Government Board under the provisions of the Gas and Water Works Facilities Act, 1870, and the Public Health Act, 1875, relating to the Borough of Conwy.
- xxxiv. An Act to confirm a Provisional Order of the Local Government Board under the provisions of the Highways and Locomotives (Amendment) Act, 1878, relating to the county of Salop.
- xxxv. An Act to confirm a Provisional Order under the Drainage and Improvement of Lands (Ireland) Act, 1863, and the Acts amending the same.
- xxxvi. An Act to confirm certain Provisional Orders of the Local Government Board relating to the Boroughs of Abingdon and Beverley, the Local Government District of Briton Ferry, the Borough of Burnley, the Local Government District of Buxton, the Borough of Cardigan, the Town of Hove, the City of Manchester, the Improvement Act District of Middleton and Tonge, the Boroughs of Newbury and Southport, the Improvement Act District of West Hartlepool, and the Local Government District of Wirksworth.

- xxxvii. An Act to confirm a scheme under the Metropolitan Commons Act, 1866, and the Metropolitan Commons Amendment Act, 1869, relating to Staines Commons.
- xxxviii. An Act to confirm certain Provisional Orders of the Local Government Board for Ireland relating to the town of Ballinasloe; and to the Ballymacormick Burial Ground; and to the towns of Clonmel and Tralee; and to Waterworks in the town of Wicklow.
- xxxix. An Act to confirm a Provisional Order under the General Police and Improvement (Scotland) Act, 1862, relating to the Burgh of Broughty Ferry.
- xl. An Act to confirm certain Provisional Orders of the Local Government Board for Ireland relating to the towns of Banbridge, Monaghan, Thurles, and Trim, and to Waterworks in the town of Kinsale, and to the Skule Bog United District.
- lviii. An Act to confirm certain Provisional Orders of the Local Government Board relating to the Improvement Act District of Abergavenny (two), the Local Government Districts of Baldock, Bredbury, Bromsgrove, Cuckfield, and Ebbw Vale, the Hanley, Stoke, and Fenton Joint Hospital District, the Local Government District of Heckmondwike, the Borough of Pembroke, and the Local Government Districts of Swindon New Town and Withington.
- lix. An Act to confirm certain Provisional Orders of the Local Government Board relating to the Rural Sanitary Districts of the Amersham, Ashby-de-la-Zouch, and Basford Unions, the Borough of Chard, the Local Government District of Croydon, the Borough of Cheltenham, the Rural Sanitary District of the Hendon Union, the Local Government Districts of Hornsey and Leyton, the City of Lincoln, the Borough of Plymouth, the Local Government District of Redditch, the Rural Sanitary District of the Shardlow Union, and the Local Board of Health District of Woolwich.
- lx. An Act to confirm a Provisional Order of the Local Government Board under the provisions of the Poor Law Amendment Act, 1867, relating to the City of Canterbury, and an Order of the Local Government Board under the provisions of the Divided Parishes and Poor Law Amendment Act, 1876, as amended and extended by the Poor Law Act, 1879, relating to the Parishes of Bepton, Chithurst, Farnhurst, Iping, Kirdford, Linch, Linchmere, Lodsworth, Lurgashall, Selham, Stedham, Terwick, Trotton, and Woolbeding, and to the Tything of North Ambersham.
- lxi. An Act for confirming certain Provisional Orders made by the Board of Trade under the Gas and Water Works Facilities Act, 1870, relating to Chew Magna Gas, Garstang Gas, Halstead Gas, Harrogate Gas, Holywell Gas, Long Eaton Gas, Trowbridge Gas, Broadstairs Water, East Blatchington and Seaford Water, Gisborough Water, Harrogate Water, Luton Water, Newhaven and Denton Water, Norwood (Middlesex) Water, and Pwllheli Water.
- lxii. An Act to confirm certain Provisional Orders of the Local Government Board relating to the Local Government District of Ashford, the Improvement Act District of Bournemouth, the Urban Sanitary District of Folkestone, the Local Government Districts of Ilfracombe and Mirfield, the Rural Sanitary District of the Reigate Union, and the Port of Wisbech.
- lxiii. An Act to confirm certain Provisional Orders of the Local Government Board for Ireland relating to a new Street in Dublin and to Waterworks in the town of Fermoy.
- lxiv. An Act to confirm the Provisional Order for the Regulation of certain Lands known as Abbotside Common, situate in the parish of Aysgarth, in the county of York, in pursuance of a report of the Inclosure Commissioners for England and Wales.
- lxxxi. An Act to confirm the Provisional Order for the Regulation of certain Lands known as Clent Hill Common, situate in the parish of Clent, in the county of Worcester, in pursuance, of a report of the Inclosure Commissioners for England and Wales.
- lxxxii. An Act to confirm a Provisional Order under the Land Drainage Act, 1861, relating to Frodsham and Helsby Improvements, situated in the parish of Frodsham, in the county of Chester.
- lxxxiii. An Act to confirm certain Provisional Orders of the Local Government Board relating to the Rural Sanitary District of the Alnwick Union, the Borough of Barnsley (two), the Local Government District of Brentford, the Rural Sanitary District of the Durham Union, the Local Government Districts of Ealing, East Dereham, and Mountain Ash (two), the Boroughs of Newcastle-under-Lyme and Penzance, the Rural Sanitary Districts of the Rothbury and Settle Unions, and the Local Government District of Torquay.
- lxxxiv. An Act to confirm certain Provisional Orders of the Local Government Board relating to the Borough of Kingston-upon-Hull, and the Improvement Act District of Ramsgate.

- lxxxv. An Act to confirm certain Provisional Orders made by the Board of Trade under the General Pier and Harbour Act, 1861, relating to Aldrington, Anstruther, Bouldnor, Broadstairs, Carrickfergus, Castle Bay (Barra), Llandudno, and Tralee and Fenit; and to amend the Cattewater Harbour Order, 1876.
- lxxxvi. An Act to confirm certain Provisional Orders of the Local Government Board relating to the Borough of Aberavon, the Local Government District of Ashton-in-Makerfield, the City of Canterbury, the Local Government District of Cleator Moor, the Borough of Congleton, the Local Government District of Horncastle, the City of Lincoln, the Local Government District of Littlehampton, the Improvement Act District of Llandudno, the Local Government Districts of Ossett-cum-Gawthorpe and Oswaldtwistle, the City of Saint Alban (two), and the Borough of Sunderland.
- lxxxvii. An Act to confirm the Provisional Order for the inclosure of certain Lands known as Hendy Bank Common, situate in the parish of Cefnallys in the county of Radnor, in pursuance of a Report of the Inclosure Commissioners for England and Wales.
- lxxxviii. An Act to confirm the Provisional Order for the inclosure of certain Lands known as the Common Fields, the Common Meadow Lands, the Cow Common, the Green, the Meres, Baulks, and other waste lands, situate in the parish of Steventon, in the county of Berks, in pursuance of a Report of the Inclosure Commissioners for England and Wales.
- lxxxix. An Act to confirm the Provisional Order for the inclosure of certain Lands known as Llandegley Rhos Common, situate in the parish of Glaschwim, in the county of Radnor, in pursuance of a Report of the inclosure Commissioners for England and Wales.
- xc. An Act to confirm the Provisional Orders for the regulation of certain Lands forming part of the Lizard Common, and situated in the parish of Landewednack, in the county of Cornwall, and the Provisional Orders for the inclosure of certain other Lands forming the remainder of the said common, and situated in the same parish, in pursuance of a Report of the Inclosure Commissioners for England and Wales.
- xc. An Act to confirm a Provisional Order made under the Public Health (Scotland) Act, 1867, relating to the Borough of Lanark.
- xcii. An Act to confirm a Provisional Order made under the Public Health (Scotland) Act, 1867, relating to the Parish of Blantyre.
- xciii. An Act to confirm an Order of the Local Government Board under the provisions of the Divided Parishes and Poor Law Amendment Act, 1876, as amended and extended by the Poor Law Act, 1879, relating to the Parishes of Bowers Gifford, Hadleigh, Laindon, Leigh, North Benfleet, Pitsea, Prittlewell, South Benfleet, Southchurch, and Vange.
- xciv. An Act to enable Her Majesty's Postmaster-General to enlarge and acquire a site for the South-western (of London) District Post Office.
- cxxx. An Act to continue for a limited period the powers of the Arbitrator under the Epping Forest Act, 1878, and to amend that Act.
- cxxxi. An Act to confirm the Provisional Order of one of Her Majesty's Principal Secretaries of State for the modification of the Metropolis (High Street, Islington) Improvement Scheme.
- cxxxii. An Act to confirm certain Provisional Orders of the Local Government Board relating to the Local Government District of Eastbourne, the Improvement Act District of Herne Bay, the Local Government Districts of Northwich and Pudsey, the Improvement Act District of Ramsgate, and the Local Government District of West Ham.
- cxxxiii. An Act to confirm the Provisional Order for the inclosure of certain Lands known as Llanfair Hills, situate in the parish of Llanfair Waterdine, in the county of Salop, in pursuance of a report of the Inclosure Commissioners for England and Wales.
- cliv. An Act to confirm certain Provisional Orders made by the Education Department under the Elementary Education Act, 1870, to enable the School Boards for Cardiff, Liverpool, Southampton, and Walton-on-Thames to put in force the Lands Clauses Consolidation Act, 1845, and the Acts amending the same.
- clxxi. An Act to confirm a certain Provisional Order of the Local Government Board for Ireland made under the Artizans and Labourers Dwellings Improvement Act, 1875, relating to the city of Dublin; and a certain Provisional Order of the said Board made under the Public Health (Ireland) Act, 1878, relating to Waterworks in the city of Armagh.
- clxxii. An Act for confirming certain Provisional Orders made by the Board of Trade under the Tramways Act, 1870, relating to Bath Tramways, Birkdale and Southport Tramways, Bristol Tramways (Extensions), Cambridge Street Tramways (Extension), Cardiff District and Penarth Harbour Tramways, Croydon Street Tramways (Extensions), Darlington Tramways, Dudley, Sedgley, and Wolver-

- hampton Tramways, Ipswich Tramways (Extensions), Llanelly Tramways, Merthyr Tramways, Peterborough Tramways, Staffordshire Tramways (Additional Powers), Stockton-on-Tees and District Tramways, Sunderland Tramways (Use of Mechanical Power), Withington Local Board Tramways, and Wolverhampton Tramways (Use of Mechanical Power).
- clxxiii. An Act for confirming certain Provisional Orders made by the Board of Trade under the Tramways Act, 1870, relating to Birmingham and Aston Tramways, Blackpool St. Anne's-on-the-Sea and Lytham Tramways, Bradford Corporation Tramways, Carlisle and District Tramways, Folkestone, Sandgate, and Hythe Tramways, North Staffordshire Tramways, Rothesay Tramways, Walsall and District Tramways, Walton-on-the-Hill Tramways, and Woolwich and Plumstead Tramways.
- clxxiv. An Act to make further provision with respect to the powers of the Commissioners for Public Works in Ireland in relation to a grant and loan for the Improvement of Kinsale Harbour, and to enable the Town Commissioners of Kinsale to guarantee a loan and levy rates for the purposes of such Improvement.
- clxxv. An Act to confirm a Provisional Order of one of Her Majesty's Principal Secretaries of State for the Improvement of Unhealthy Areas in the Parliamentary Burgh of Leith.
- clxxvi. An Act to confirm a Provisional Order made under the General Police and Improvement (Scotland) Act, 1862, relating to Forfar Gas.
- clxxvii. An Act to confirm certain Provisional Orders under the Drainage and Improvement of Lands (Ireland) Act, 1863, and the Acts amending the same.
- clxxviii. An Act to confirm certain Provisional Orders of the Local Government Board relating to the Improvement Act District of Bethesda, the Borough of Birmingham, the Local Government District of Haworth, the Lower Thames Valley Main Sewerage District, the Borough of Rochdale, the Rochester and Chatham Joint Hospital District, the Boroughs of Rotherham, Stockton, and Middlesbrough, and the City of York (two).
- cciv. An Act to confirm a Provisional Order under the Drainage and Improvement of Lands (Ireland) Act, 1863, and the Acts amending the same.
- ccv. An Act to confirm a Provisional Order made by the Education Department under the Elementary Education Act, 1870, to enable the School Board for London to put in force the Lands Clauses Consolidation Act, 1845, and the Acts amending the same.
- ccvi. An Act to enable the Commissioners of Public Works in Ireland to lend the sum of One thousand pounds to the Mulkear Drainage District Board.

## LIST OF THE LOCAL AND PRIVATE ACTS.

### LOCAL ACTS.

*The Titles to which the Letter P. is prefixed are Public Acts of a Local Character.*

- i. An Act to enable the Edinburgh and District Water Trustees to borrow additional sums of money; and for other purposes.
- ii. An Act to alter the Boundaries of certain of the existing Wards and to create new Wards in the city of Bristol; and for other purposes.
- P. iii. An Act to confirm a Provisional Order under the Drainage and Improvement of Lands (Ireland) Act, 1863, and the Acts amending the same.
- iv. An Act to authorise the Bury and Tottington District Railway Company to raise additional Capital; and for other purposes.
- v. An Act to provide for the Sale of a Burial Ground of the parish of Aston-juxta-Birmingham, situate in Liverpool Street, in the borough of Birmingham; and for other purposes.
- vi. An Act to make provision with respect to Mortgages by the Municipal Commissioners of the Borough of Carrickfergus and the Carrickfergus Harbour Commissioners of their respective Properties for the improvement of Carrickfergus Harbour; and for other purposes.
- vii. An Act to enable the Vestry of Saint Luke, Middlesex, to lease and otherwise deal with

- Surplus Lands acquired by them in making Street Improvements.
- viii. An Act for amending some of the Provisions of the Cardiff Corporation Act, 1879, and for conferring Powers upon the Cardiff Waterworks Company; and for other purposes.
  - ix. An Act to enable the Chester United Gas Company to raise additional Capital.
  - x. An Act for empowering the London and North-western Railway Company to construct a new railway to be called the Sutton Coldfield and Lichfield Railway; and for other purposes.
  - xi. An Act to enlarge the powers of the Lord Provost, Magistrates, and Council of the City of Glasgow as Trustees for carrying into effect the provisions of the Glasgow Improvements Acts of 1866 and 1871.
  - xii. An Act for the Abandonment of the Railway authorised by the Worcester and Aberystwith Junction Railway (Deviation) Act, 1877; and for other purposes.
  - xiii. An Act for extending the time for the completion of the Llanelly and Mynydd Mawr Railway; and for other purposes.
  - xiv. An Act to amend the Provisions of certain Acts relating to the Liverpool and Birkenhead Docks with regard to Byelaws; and for other purposes.
  - xv. An Act for the Abandonment of the Railway authorised by the Wednesfield and Wyrley Bank Railway Act, 1875.
  - xvi. An Act to authorise the South London Tramways Company to construct additional Tramways; to raise further Money; and for other purposes.
  - xvii. An Act to alter the provisions with respect to the dissolution of the Dukinfield and Denton Joint Gas Committee, and to make further provisions with respect to the supply of Gas to the townships of Denton and Haughton in the county of Lancaster; and for other purposes.
  - xviii. An Act for granting further powers to the Swindon, Marlborough, and Andover Railway Company.
  - xix. An Act for the Abandonment of the Ely and Bury Saint Edmunds Railway.
  - xx. An Act to enlarge the powers of the Prescott Gas Company and for other purposes in connexion with their undertaking.
  - xxi. An Act to authorise the construction of Waterworks for the supply of water to the Lunatic Asylum for the County Palatine of Lancaster, situate at Whittingham, in the said county; and to enable the Justices of the Peace for the said county to provide necessary courts, offices, and lock-ups for the holding of General or Quarter Sessions of the Peace within the hundred of West Derby in the said county.
  - xxii. An Act to extend the time for the Purchase of Lands authorised by the Bristol and Portishead Pier and Railway Company's Act, 1877, to be acquired, and to authorise that Company to raise additional Capital; and for other purposes.
  - xxiii. An Act to authorise alterations of the Gauge of the Letterkenny Railway and of the Londonderry and Lough Swilly Railway, for extending the periods limited for the compulsory purchase of certain lands by the Letterkenny Railway Company and for the completion of that Company's Railways, to authorise Agreements between them and the Londonderry and Lough Swilly Railway Company; and for other purposes.
  - xxiv. An Act for further extending the time for the completion of Railway No. 1 authorised by the Llantrissant and Taff Vale Junction Railway Act, 1866.
  - xxv. An Act to extend certain powers of the Sligo, Leitrim, and Northern Counties Railway Company; and for other purposes.
  - xxvi. An Act for extending the boundaries of the borough of Chepping Wycombe, in the county of Buckingham; and for other purposes.
  - xxvii. An Act to authorise the Sutton Bridge Dock Company to construct new works at Sutton Bridge in the parts of Holland, in the county of Lincoln; and for other purposes.
  - xxviii. An Act for making further Provision with respect to certain officers of the city of Liverpool in the county of Lancaster; and for other purposes.
  - xxix. An Act to empower the Mayor, Aldermen, and Burgesses of the borough of Doncaster to construct additional works, to acquire Lands and Easements for that purpose; and for other purposes.
  - xxx. An Act to enable the Hendon Rural Sanitary Authority to make certain payments to the Local Board for the Hendon Local Government District out of the income of trust estates and funds vested in the Edgware Highway Board by the Metropolis (Kilburn and Harrow) Roads Act, 1872, to vary the provisions of the said Act, to discharge the Hendon Rural Sanitary Authority from the obligation to maintain portions of a certain road, to impose on them the obligation to maintain another portion of the same road; and for other purposes.

- xxx. An Act to establish and render valid certain Building Leases and a certain Agreement for a Building Lease of parts of the Estates of the Warden and Poor Men of the Hospital of the Holy and Undivided Trinity in East Greenwich, founded by Henry Howard, Earl of Northampton, commonly called Trinity Hospital, Greenwich.
- xxxii. An Act for regulating the management of the Widows Fund of the Faculty of Physicians and Surgeons of Glasgow; for authorising a transfer of the Fund and its liabilities; for winding up the Fund; and for other purposes.
- P. xxxiii. An Act to confirm a Provisional Order of the Local Government Board under the provisions of the Gas and Water Works Facilities Act, 1870, and the Public Health Act, 1875, relating to the Borough of Conway.
- P. xxxiv. An Act to confirm a Provisional Order of the Local Government Board under the provisions of the Highways and Locomotives (Amendment) Act, 1878, relating to the county of Salop.
- P. xxxv. An Act to confirm a Provisional Order under the Drainage and Improvement of Lands (Ireland) Act, 1863, and the Acts amending the same.
- P. xxxvi. An Act to confirm certain Provisional Orders of the Local Government Board relating to the Boroughs of Abingdon and Beverley, the Local Government District of Briton Ferry, the Borough of Burnley, the Local Government District of Buxton, the Borough of Cardigan, the Town of Hove, the City of Manchester, the Improvement Act District of Middleton and Tonge, the Boroughs of Newbury and Southport, the Improvement Act District of West Hartlepool, and the Local Government District of Wirksworth.
- P. xxxvii. An Act to confirm a Scheme under the Metropolitan Commons Act, 1866, and the Metropolitan Commons Amendment Act, 1869, relating to Staines Commons.
- P. xxxviii. An Act to confirm certain Provisional Orders of the Local Government Board for Ireland relating to the town of Ballinasloe; and to the Ballymacormick Burial Ground; and to the towns of Clonmel and Tralee; and to Waterworks in the Town of Wicklow.
- P. xxxix. An Act to confirm a Provisional Order under the General Police and Improvement (Scotland) Act, 1862, relating to the Burgh of Broughty Ferry.
- P. xl. An Act to confirm certain Provisional Orders of the Local Government Board for Ireland relating to the towns of Banbridge, Monaghan, Thurles, and Trim, and to Waterworks in the town of Kinsale, and to the Skule Bog United District.
- xli. An Act for the Abandonment of the Green-castle and Kilkeel Railway.
- xlii. An Act to authorise the Construction and Maintenance of a Sea Wall and other Works at Clacton-on-Sea, in the county of Essex, and to provide for the Appointment of Commissioners for that purpose.
- xliii. An Act to extend the period limited for the compulsory purchase of lands for the Loose Valley Railway.
- xliv. An Act for the Incorporation of Trustees; for vesting in them Newry Port, Harbours, River, and Canal Navigation; for enlarging and improving the same, and making certain new Works in connexion therewith; and for other purposes.
- xlv. An Act to extend the time for the Purchase of certain Lands and for the Construction of the Works authorised by the Milford Docks Acts, 1874 and 1875.
- xlvi. An Act for conferring further Powers on the Eastbourne Gas Company for the Purchase of Land, the Construction of Works, the raising of Money, and otherwise in relation to their undertaking.
- xlvii. An Act for granting further Powers to the Didcot, Newbury, and Southampton Junction Railway Company; and for other purposes.
- xlviii. An Act for authorising the Construction of a Railway from the Gwinear Road Station of the West Cornwall Railway Company to Helston; and for other purposes.
- xlix. An Act to authorise the Bristol Port and Channel Dock Company to make a new Entrance into their Dock, and to confer further powers upon them.
- l. An Act for making a railway in the parishes of Beckenham, Wickham otherwise West Wickham, and Hayes, in the county of Kent; and for other purposes.
- li. An Act to incorporate a Company for establishing and holding Markets and Fairs and Slaughter-houses, and building a Town Hall in the Town of Aberdare, in the County of Glamorgan, and to authorise the Company to purchase the Undertaking of the Aberdare Market Company; and for other purposes.
- lii. An Act for the revival of the powers for making and maintaining a bridge across the River Severn at Shrewsbury, with Approaches thereto; and for other purposes.
- liii. An Act for the abandonment of the Bridge authorised by the Stapenhill Bridge Act, 1866, and for the making and maintaining of

- another Bridge in lieu thereof; and for other purposes.
- liv. An Act to amend the Corris, Machynlleth, and River Dovey Tramroad Act, 1858, and the Corris Railway Act, 1864, and to confer further powers upon the Corris Railway Company; and for other purposes.
- lv. An Act for extending the time limited by the Swansea Harbour Act, 1874, for the completion of the Docks, Railways, and Works by that Act authorised, and for enabling the Earl of Jersey to act as a Harbour Trustee.
- lvi. An Act for the abandonment of the Cashel Extension Railway authorised by the Southern Railway (Extension and Further Powers) Act, 1873; and for other purposes.
- lvii. An Act to authorise the Mayor, Aldermen, and Burgesses of the Borough of Wakefield to construct certain Reservoirs and Waterworks, to contract their limits of supply; and for other purposes.
- P. lviii. An Act to confirm certain Provisional Orders of the Local Government Board relating to the Improvement Act District of Abergavenny (two), the Local Government Districts of Baldock, Bredbury, Bromsgrove, Cuckfield, and Ebbw Vale, the Hanley, Stoke, and Fenton Joint Hospital District, the Local Government District of Heckmondwike, the Borough of Pembroke, and the Local Government Districts of Swindon New Town, and Withington.
- P. lix. An Act to confirm certain Provisional Orders of the Local Government Board relating to the Rural Sanitary Districts of the Amersham, Ashby-de-la-Zouch, and Basford Unions, the Borough of Chard, the Local Government District of Croydon, the Borough of Cheltenham, the Rural Sanitary District of the Hendon Union, the Local Government Districts of Hornsey and Leyton, the City of Lincoln, the Borough of Plymouth, the Local Government District of Redditch, the Rural Sanitary District of the Shardlow Union, and the Local Board of Health District of Woolwich.
- P. lx. An Act to confirm a Provisional Order of the Local Government Board under the provisions of the Poor Law Amendment Act, 1867, relating to the City of Canterbury, and an Order of the Local Government Board under the provisions of the Divided Parishes and Poor Law Amendment Act, 1876, as amended and extended by the Poor Law Act, 1879, relating to the Parishes of Bepton, Chithurst, Farnhurst, Iping, Kirdford, Linch, Linchmere, Lodsworth, Lurgashall, Selham, Stedham, Terwick, Trotton, and Woolbeding, and to the Tything of North Ambersham.
- P. lxi. An Act for confirming certain Provisional Orders made by the Board of Trade under the Gas and Water Works Facilities Act, 1870, relating to Chew Magna Gas, Garstang Gas, Halstead Gas, Harrogate Gas, Holywell Gas, Long Eaton Gas, Trowbridge Gas, Broadstairs Water, East Blatchington and Seaford Water, Gisborough Water, Harrogate Water, Lutton Water, Newhaven and Denton Water, Norwood (Middlesex) Water, and Pwllheli Water.
- P. lxii. An Act to confirm certain Provisional Orders of the Local Government Board relating to the Local Government District of Ashford, the Improvement Act District of Bournemouth, the Urban Sanitary District of Folkestone, the Local Government Districts of Ilfracombe and Mirfield, the Rural Sanitary District of the Reigate Union, and the Port of Wisbech.
- P. lxiii. An Act to confirm certain Provisional Orders of the Local Government Board for Ireland relating to a new Street in Dublin, and to Waterworks in the town of Fermoy.
- P. lxiv. An Act to confirm the Provisional Order for the Regulation of certain Lands known as Abbotside Common, situate in the parish of Aysgarth, in the county of York, in pursuance of a report of the Inclosure Commissioners for England and Wales.
- lxv. An Act to authorise the Manchester and Milford Railway Company to abandon the Branch Railway to Devil's Bridge; and for other purposes.
- lxvi. An Act for conferring further powers upon the Exmouth and Budleigh Salterton Waterworks Company; for the raising of further capital; and for other purposes.
- lxvii. An Act for incorporating and conferring Powers on the Malton Gas Company.
- lxviii. An Act to amend, vary, and extend the Powers of the Caledonian Insurance Company, and for other purposes relating thereto.
- lxix. An Act to enable the London, Tilbury, and Southend Railway Company to improve and extend the West Street Pier at Gravesend, and to construct a Wharf at Thames Haven.
- lxx. An Act to authorise the Wrexham Waterworks Company to make new Service Reservoirs and Filter Beds; to further extend their Limits of Supply; to raise additional Capital; and for other purposes.
- lxxi. An Act to confer further Powers upon the London, Brighton, and South Coast Railway Company.
- lxxii. An Act to authorise the Wandsworth and Putney Gaslight and Coke Company to raise further Capital; and for other purposes.

- lxxiii. An Act for empowering the Corporation of the Borough of Stafford to acquire certain rights in Coton Field in the said borough, and to authorise the formation of allotment gardens for the Freemen of the borough, and of public pleasure grounds in Coton Field, and for conferring on the Corporation further powers in relation to their water undertaking and street improvements, and further sanitary and other powers; and for other purposes.
- lxxiv. An Act for extending the time for making and completing the Mersey Railway.
- lxxv. An Act to extend the period for the completion of the works authorised by the Belfast Street Tramways Act, 1878.
- lxxvi. An Act to enable the Lincoln Gaslight and Coke Company to raise additional capital; and for other purposes.
- lxxvii. An Act to give effect to an agreement for the transfer to the Corporation of Lancaster of the Lancaster Gas Company's Undertaking, and to authorise the Corporation to make Street Improvements, and to borrow Moneys; and for other purposes.
- lxxviii. An Act to amend the Pegwell Bay Reclamation and Sandwich Haven Improvement Act, 1873, and the Acts amending the same.
- lxxix. An Act to enable the Bristol General Cemetery Company to enlarge their Cemetery, to raise additional Capital: and for other purposes.
- lxxx. An Act for authorising Improvements in the Parishes of Saint Mary Abbots, Kensington, and Saint Luke, Chelsea; and for other purposes.
- P. lxxxi. An Act to confirm the Provisional Order for the Regulation of certain Lands known as Clent Hill Common, situate in the parish of Olent, in the county of Worcester, in pursuance of a report of the Inclosure Commissioners for England and Wales.
- P. lxxxii. An Act to confirm a Provisional Order under the Land Drainage Act, 1861, relating to Frodsham and Helsby Improvements, situated in the parish of Frodsham, in the county of Chester.
- P. lxxxiii. An Act to confirm certain Provisional Orders of the Local Government Board relating to the Rural Sanitary District of the Alnwick Union, the Borough of Barnsley (two), the Local Government District of Brentford, the Rural Sanitary District of the Durham Union, the Local Government Districts of Ealing, East Dereham, and Mountain Ash (two), the Boroughs of Newcastle-under-Lyme and Penzance, the Rural Sanitary Districts of the Rothbury and Settle Unions, and the Local Government District of Torquay.
- P. lxxxiv. An Act to confirm certain Provisional Orders of the Local Government Board relating to the Borough of Kingston-upon-Hull, and the Improvement Act District of Ramsgate.
- P. lxxxv. An Act to confirm certain Provisional Orders made by the Board of Trade under the General Pier and Harbour Act, 1861, relating to Aldrington, Anstruther, Bouldnor, Broadstairs, Carrickfergus, Castle Bay (Barra), Llandudno, and Tralee and Fenit; and to amend the Cattewater Harbour Order, 1876.
- P. lxxxvi. An Act to confirm certain Provisional Orders of the Local Government Board relating to the Borough of Aberavon, the Local Government District of Ashton-in-Makerfield, the City of Canterbury, the Local Government District of Cleator Moor, the Borough of Congleton, the Local Government District of Horncastle, the City of Lincoln, the Local Government District of Littlehampton, the Improvement Act District of Llandudno, the Local Government Districts of Ossett-cum-Gawthorpe and Oswaldtwistle, the City of Saint Alban (two), and the Borough of Sunderland.
- P. lxxxvii. An Act to confirm the Provisional Order for the inclosure of certain Lands known as Hendy Bank Common, situate in the parish of Cefnlllys in the county of Radnor, in pursuance of a Report of the Inclosure Commissioners for England and Wales.
- P. lxxxviii. An Act to confirm the Provisional Order for the inclosure of certain Lands known as the Common Fields, the Common Meadow Lands, the Cow Common, the Green, the Meres, Baulks, and other waste lands, situate in the parish of Steventon, in the county of Berks, in pursuance of a Report of the Inclosure Commissioners for England and Wales.
- P. lxxxix. An Act to confirm the Provisional Order for the inclosure of certain Lands known as Llandegley Rhos Common, situate in the parish of Glaschwim, in the county of Radnor, in pursuance of a Report of the Inclosure Commissioners for England and Wales.
- P. xc. An Act to confirm the Provisional Orders for the regulation of certain Lands forming part of the Lizard Common, and situated in the parish of Landewednack, in the county of Cornwall, and the Provisional Orders, for the inclosure of certain other Lands forming the remainder of the said common, and situated in the same parish, in pursuance of a Report of the Inclosure Commissioners for England and Wales.
- P. xci. An Act to confirm a Provisional Order made under the Public Health (Scotland) Act, 1867, relating to the Borough of Lanark.

- P. xcii. An Act to confirm a Provisional Order made under the Public Health (Scotland) Act, 1867, relating to the parish of Blantyre.
- P. xciii. An Act to confirm an Order of the Local Government Board under the provisions of the Divided Parishes and Poor Law Amendment Act, 1876, as amended and extended by the Poor Law Act, 1879, relating to the Parishes of Bowers Gifford, Hadleigh, Laindon, Leigh North Benfleet, Pitsea, Prittlewell, South Benfleet, Southchurch, and Vange.
- P. xciv. An Act to enable Her Majesty's Postmaster-General to enlarge and acquire a site for the South-western (of London) District Post Office.
- xcv. An Act to enable the Mayor, Aldermen, and Burgesses of the Borough of Cork to make better Regulations with reference to Street Traffic and Streets, to confer further powers on the Corporation with reference to Water Supply, to fund the Corporate Debt; and for other purposes.
- xcvi. An Act to confer further Powers upon the London Gas Light Company; and for other purposes.
- xcvii. An Act for empowering the North Metropolitan Tramways Company to construct Works and raise further Money, and to make Agreements with the London Street Tramways Company; and for other purposes.
- xcviii. An Act for the improvement of the Drainage of the Upper and Wittersham Levels, otherwise the Kent and Sussex Rother Levels; and for other purposes.
- xcix. An Act to enable the Mayor, Aldermen, and Burgesses of the borough of Huddersfield to construct Tramways, New Streets, Roads, and Street and Road Improvements, and other Works; and to make further provision for the good government of the borough; and for other purposes.
- c. An Act to repeal the Portmadoc Water Order, 1871; to incorporate a Company, and to vest in such Company the undertaking authorised by the said Order, and to grant powers to such Company for the construction of additional Waterworks, and for the supply of water to Portmadoc and the neighbourhood thereof; and for other purposes.
- ci. An Act to authorise the construction of Tramways in the Borough of Northampton and adjacent places; and for other purposes.
- cii. An Act to confer further powers upon the Yeaton and Guiseley Gaslight and Coke Company and to enable them to raise further money; and for other purposes.
- ciii. An Act to extend the limits of the Great Yarmouth Waterworks Company, and to authorise the said Company to construct new works and raise more money; and for other purposes.
- civ. An Act for providing for the return of the Money deposited for securing the Completion of the Railways authorised by the Devon and Cornwall Railway (Western Extensions) Act, 1873.
- cv. An Act to authorise the Ballymena, Cushendall, and Redbay Railway Company to apply to the purposes of the Ballymena, Cushendall, and Redbay Railway Act, 1872, a sum of twenty-two thousand pounds which they are authorised to raise under the Powers of the Ballymena, Cushendall, and Redbay Railway Act, 1878, and which is not required for the purposes of that Act.
- cvi. An Act to confer further powers on the Metropolitan District Railway Company.
- cvi. An Act for the revival of the powers and extension of the time for the compulsory purchase of lands and completion of the works authorised by the Romford Canal Act, 1875.
- cvi. An Act for extending the Rathmines and Rathgar township, so as to include therein the adjoining townland of Milltown, in the county of Dublin; for the establishment of a Fire Brigade; and for other purposes.
- cix. An Act to revive the powers and extend the periods respectively limited for the Construction of Waterworks and Supply of Water and the Purchase of Market Rights authorised by the Sligo Borough Improvement Act, 1869; and for other purposes.
- cx. An Act for amalgamating the Monmouthshire Railway and Canal Company with the Great Western Railway Company.
- cxi. An Act for rendering valid certain Letters Patent granted to Bristow Hunt for the Invention of improved Machinery or Apparatus for setting and distributing Types.
- cxi. An Act for dissolving the Manchester Carriage Company, Limited, and re-incorporating the Members thereof as a new Company, and for transferring to such new Company the powers conferred by the Manchester Suburban Tramways Acts, 1878 and 1879, and the Manchester Suburban Tramways Orders, 1877 and 1878; and for conferring further powers for the construction of new and the completion of authorised Tramways; and for other purposes.
- cxi. An Act for incorporating and conferring powers on the Ackworth, Featherstone, Purston, and Sharlston Gas Company.
- cxi. An Act to enable the Maidstone Gas Company to construct additional Works; to raise further Capital; and for other purposes.

- cxv. An Act for enabling the Reading Gas Company to raise additional Capital and to construct new Works; and for other purposes.
- cxvi. An Act to incorporate a Company for making Works and supplying Water within certain parishes and townships in the Valley of the Dearn; and for other purposes.
- cxvii. An Act to authorise the Hundred of Hoo Railway Company to extend their Railway by the making of a further Line of Railway, and also a jetty, pier, or landing-place, in the county of Kent, to raise further Money; and for other purposes.
- cxviii. An Act to extend the Borough of Preston and to enable the Mayor, Aldermen, and Burgesses thereof to provide a Site for a Public Library and Museum, to make new Streets, Street Improvements, Tramways, and other works; and to make further provision for the Improvement and good Government of the Borough; and for other purposes.
- cxix. An Act for empowering the Corporation of the City of Rochester to acquire the undertaking of the Strood Waterworks Company, and carry on the same; to construct additional Waterworks and supply Water; to construct Embankment and Sewerage Works; and for other purposes.
- cxx. An Act for empowering the British Gaslight Company to enlarge their works and to expend further capital at their Staffordshire Potteries Station; and for other purposes.
- cxxi. An Act for rendering valid certain Letters Patent granted to William Shepherd Williamson, of Congleton in the County of Chester, for the Invention of Improvements in Blast Furnaces.
- cxxii. An Act to authorise the Dartford Gas Company to purchase additional lands, to raise additional capital, to amalgamate with the Darenth Vale Gas Company, to extend the limits of supply; and for other purposes.
- cxxiii. An Act to provide for the dissolution of the Glasgow, Garnkirk, and Coatbridge Railway Company, the Clydesdale Railway Guaranteed Company, the Greenock Railway Guaranteed Company, the Wishaw Railway Guaranteed Company, and the Glasgow, Barrhead, and Neilston Direct Railway Company, and for the conversion of the stocks of those Companies into annuities stock of the Caledonian Railway Company; and for other purposes.
- cxxiv. An Act to amend the Bristol Channel Pilotage Act, 1861, so far as relates to the Cardiff Pilotage Board; and for other purposes.
- cxxv. An Act to make further provision for the lighting of the Borough of Kingston-upon-Hull, and to extend the powers of the Mayor, Aldermen, and Burgesses of the Borough in relation to the supply of light by electricity; and for other purposes.
- cxixvi. An Act for carrying into effect an Agreement for the transfer by the Liverpool United Tramways and Omnibus Company of their Tramways in the City of Liverpool to the Corporation of Liverpool, and for the Lease of those Tramways to the Company; and for other purposes.
- cxixvii. An Act for empowering the Mayor, Aldermen, and Burgesses of the borough of Wigan in the county of Lancaster, to make New Streets, and Improvement of Streets; and for conferring on them further Borrowing Powers and other powers; and for other purposes.
- cxixviii. An Act for making better provision for the Drainage of the Low Grounds and Carrs (known as the Beverley and Barmston Drainage District) in the East Riding of the County of York, and for amending the Acts relating thereto; and for other purposes.
- cxixix. An Act to amalgamate the Undertakings of the Highland and Dingwall and Skye Railway Companies; and for other purposes.
- P. cxxx. An Act to continue for a limited period the powers of the Arbitrator under the Epping Forest Act, 1878, and to amend that Act.
- P. cxxxi. An Act to confirm the Provisional Order of one of Her Majesty's Principal Secretaries of State for the modification of the Metropolis (High Street, Islington) Improvement Scheme.
- P. cxxxii. An Act to confirm certain Provisional Orders of the Local Government Board relating to the Local Government District of Eastbourne, the Improvement Act District of Herne Bay, the Local Government Districts of Northwich and Pudsey, the Improvement Act District of Ramsgate, and the Local Government District of West Ham.
- P. cxxxiii. An Act to confirm the Provisional Order for the Inclosure of certain Lands known as Llanfair Hills, situate in the parish of Llanfair Waterdine, in the county of Salop, in pursuance of a report of the Inclosure Commissioners for England and Wales.
- cxixxiv. An Act to authorise the Metropolitan Railway Company to make a railway in extension of the Kingsbury and Harrow Railway to the town of Rickmansworth; and for other purposes.
- cxixxv. An Act to confirm an agreement between the Glasgow, Yoker, and Clydebank, and North British Railway Companies; and for other purposes.

- cxixvi. An Act to vary the mode of dealing with certain roads crossed by the authorised railways of the East Norfolk Railway Company, and to confer certain powers on the Great Eastern Railway Company with reference to the Western Extensions Capital of the East Norfolk Railway Company; and for other purposes.
- cxixvii. An Act to amend the Acts relating to the Clyde Lighthouses, and to provide for the improvement of the Navigation of the River Clyde below Newark Castle, Port Glasgow.
- cxixviii. An Act to enable the Rathmines and Rathgar Improvement Commissioners to improve the Water Supply of the Rathmines and Rathgar township; and for other purposes.
- cxixix. An Act to confer powers upon the Corporation of Burton-upon-Trent with reference to Bridges over the River Trent at Stapenhill; to enable them to purchase Lands and construct Works for the disposal of Sewage; and to supply Light by Electricity; and for other purposes.
- cxli. An Act to confer further powers with respect to the Great Northern Railway and to the joint undertakings of the Great Northern and Great Eastern and Great Northern and London and North-western Railway Companies.
- cxlii. An Act for conferring upon the Great Western Railway Company further powers in connexion with their own Undertaking and the Undertakings of other Companies; for vesting in that Company the Undertakings of the Ely and Clydach Valleys, the Malmesbury, and the Mitcheldean Road and Forest of Dean Junction Railway Companies; for vesting in the Great Western Railway Company and the Bala and Festiniog Railway Company the Undertaking of the Festiniog and Blaenau Railway Company, Limited; and for other purposes.
- cxliii. An Act for extending the boundaries of the Municipal Borough of King's Lynn; for authorising the Corporation of the said borough to subscribe further moneys towards the King's Lynn Docks; for amending the King's Lynn Waterworks and Borough Improvement Act, 1869, and the Eau Brink Acts; and for other purposes.
- cxliiii. An Act for enabling the Mayor, Aldermen, and Citizens of the City of Liverpool in the county of Lancaster to obtain a supply of Water from the Rivers Vyrnwy, Marchnant, and Afon Cowny in Montgomeryshire; and for other purposes.
- cxliv. An Act to enable the Liverpool United Gaslight Company to erect additional Gasworks, and to extend their Limits of Supply.
- cxlv. An Act for conferring further powers upon the London and North-western Railway Company in connexion with their own Undertaking, and upon that Company jointly with the Lessees of the North and South-western Junction Railway, and the Great Western Railway Company, and the Lancashire and Yorkshire Railway Company, and the Manchester, Sheffield, and Lincolnshire Railway Company, and the Furness Railway Company, in respect of other Undertakings in which they are jointly interested; and for conferring further powers upon the Lancashire Union Railways Company; and for other purposes.
- cxlvi. An Act for conferring additional powers on the Midland Railway Company in connexion with their own Undertaking and the Undertakings of the Sharpness New Docks and Gloucester and Birmingham Navigation Company and the Severn Bridge Railway Company; for raising further Capital; and for other purposes.
- cxlvii. An Act to alter and extend the borough of Oldham, to confer upon the Corporation further powers in relation to their Water and Gas undertakings, and for improving the Local Government of the borough; to amend the Acts relating to the borough; and for other purposes.
- cxlviii. An Act for conferring further powers on the Banbury and Cheltenham Direct Railway Company in connexion with their authorised Undertaking; and for other purposes.
- cxlix. An Act for incorporating the Dagenham and District Farmers' (Optional) Sewage Utilization Company, and for authorising them to construct Works for Supply of Sewage to Owners and Occupiers of Land in Dagenham and the adjacent District; and for other purposes.
- cl. An Act for making a Railway from Woodside to South Croydon, in the county of Surrey; and for other purposes.
- cli. An Act for subjecting lands within the Black Sluice Level to further taxation for Outfall Improvements, and for increasing the area of taxation; and for other purposes.
- clii. An Act for making Tunnels, Subways, and Roadways partly under the River Mersey between Liverpool and Birkenhead.
- cliii. An Act to authorise the construction of a New Cut and other Works for improving the Outfall of the River Witham, in the county of Lincoln, and the constitution of a Joint Board for effecting such works; and for other purposes.
- P. oliv. An Act to confirm certain Provisional Orders made by the Education Department

- under the Elementary Education Act, 1870, to enable the School Boards for Cardiff, Liverpool, Southampton, and Walton-on-Thames to put in force the Lands Clauses Consolidation Act, 1845, and the Acts amending the same.
- clv. An Act to confer further powers on the London Tramways Company (Limited).
- clvi. An Act for making a Railway from the Blane Valley Railway to the Forth and Clyde Junction Railway at Gartness, and a Railway from the Forth and Clyde Junction Railway to Aberfoyle; and for other purposes.
- clvii. An Act to authorise the transfer of the Undertaking of the Hinckley Gaslight and Coke Company, Limited, to the Hinckley Local Government Board; and for other purposes.
- clviii. An Act to revive and amend the powers of the Killorglin Railway Act, 1871, for making a Railway in the county of Kerry from the Farranfore Station of the Great Southern and Western Railway to Killorglin, to provide for a Baronial Guarantee with reference to the Railway; and for other purposes.
- clix. An Act for making Railways between Maidstone and Ashford in the county of Kent; and for other purposes.
- clx. An Act to authorise the Pontypridd, Caerphilly, and Newport Railway Company to deviate a portion of their authorised railway near Pontypridd.
- clxi. An Act for making a Railway in the county of Devon, to be called the Totnes, Paignton, and Torquay Direct Railway; and for other purposes.
- clxii. An Act to empower the Preston Tramways Company to accept leases of and to work Tramways to be hereafter constructed in or near the Borough of Preston, and to authorise them to raise additional Capital; and for other purposes.
- clxiii. An Act to revive the powers and extend the periods for the compulsory purchase of Lands, and for the construction of the Railways authorised by the Scarborough and Whitby Railway Acts, 1871 and 1873; and for other purposes.
- clxiv. An Act to authorise the construction of Tramways in and near to the borough of Gateshead, in the county of Durham; and for other purposes.
- clxv. An Act to enable the Lynn and Fakenham Railway Company to extend their Railway to Norwich and Blakeney; and for other purposes.
- clxvi. An Act to authorise a Deviation in the Kingsbury and Harrow Railway; the Revival and Extension of Time for the Purchase of Lands in connexion with the works authorised by the Saint John's Wood Railway Act, 1873, and the Metropolitan Railway Act, 1877; the purchase of other Lands; the diverting or stopping up of certain bridle road and foot-paths; also to amend the Acts relating to the Hammersmith and City Railway with respect to superfluous lands, and the Metropolitan and District Railways Act, 1879, with respect to Capital; and for other purposes.
- clxvii. An Act to amalgamate the Port Carlisle Dock and Railway Company, the Carlisle and Silloth Bay Railway and Dock and the North British, Arbroath, and Montrose Railway Companies with the North British Railway Company, and to authorise the Company to make a Dock at Silloth; to purchase additional Lands; to make agreements with respect to the erection of Passenger Sheds at the Waverley Station; to guarantee Interest on sums raised for Dock Works at Bo'ness; to contribute to the Forth Bridge Railway Company, and to authorise the Newport Railway Company and the Company to raise more Money; also to extend the time for the sale of superfluous Lands; and for other purposes.
- clxviii. An Act for incorporating the Alford and Sutton Tramways Company and authorising them to construct Tramways from Alford to Sutton-le-Marsh in the parts of Lindsey in the county of Lincoln; and for other purposes.
- clxix. An Act to empower the North Dublin Street Tramways Company to construct New Tramways; and for other purposes.
- clxx. An Act to alter and extend the powers of the Trustees of the Port and Harbours of Greenock in relation to the Harbours and Docks; and for other purposes.
- P. clxxi. An Act to confirm a certain Provisional Order of the Local Government Board for Ireland made under the Artizans and Labourers Dwellings Improvement Act, 1875, relating to the city of Dublin; and a certain Provisional Order of the said Board made under the Public Health (Ireland) Act, 1878, relating to Water-works in the city of Armagh.
- P. clxxii. An Act for confirming certain Provisional Orders made by the Board of Trade under the Tramways Act, 1870, relating to Bath Tramways, Birkdale and Southport Tramways, Bristol Tramways (Extensions), Cambridge Street Tramways (Extension), Cardiff District and Penarth Harbour Tramways, Croydon Street Tramways (Extensions), Darlington Tramways, Dudley, Sedgley, and Wolverhampton Tramways, Ipswich Tramways (Extensions), Llanelli Tramways, Merthyr Tramways, Peterborough Tramways, Staffordshire Tramways (Additional Powers), Stockton-on-Tees and District Tramways,

Sunderland Tramways (Use of Mechanical Power), Withington Local Board Tramways, and Wolverhampton Tramways (Use of Mechanical Power).

- P. clxxiii. An Act for confirming certain Provisional Orders made by the Board of Trade under the Tramways Act, 1870, relating to Birmingham and Aston Tramways, Blackpool St. Anne's-on-the-Sea and Lytham Tramways, Bradford Corporation Tramways, Carlisle and District Tramways, Folkestone, Sandgate, and Hythe Tramways, North Staffordshire Tramways, Rothesay Tramways, Walsall and District Tramways, Walton-on-the-Hill Tramways, and Woolwich and Plumstead Tramways.
- P. clxxiv. An Act to make further provision with respect to the powers of the Commissioners for Public Works in Ireland in relation to a grant and loan for the Improvement of Kinsale Harbour, and to enable the Town Commissioners of Kinsale to guarantee a loan and levy rates for the purposes of such Improvement.
- P. clxxv. An Act to confirm a Provisional Order of one of Her Majesty's Principal Secretaries of State for the Improvement of Unhealthy Areas in the Parliamentary Burgh of Leith.
- P. clxxvi. An Act to confirm a Provisional Order made under the General Police and Improvement (Scotland) Act, 1862, relating to Forfar Gas.
- P. clxxvii. An Act to confirm certain Provisional Orders under the Drainage and Improvement of Lands (Ireland) Act, 1863, and the Acts amending the same.
- P. clxxviii. An Act to confirm certain Provisional Orders of the Local Government Board relating to the Improvement Act District of Bethesda, the Borough of Birmingham, the Local Government District of Haworth, the Lower Thames Valley Main Sewerage District, the Borough of Rochdale, the Rochester and Chatham Joint Hospital District, the Boroughs of Rotherham, Stockton, and Middlesbrough, and the City of York (two).
- clxxix. An Act for making a Railway from Tralee to Fenit, in the county of Kerry; and for other purposes.
- clxxx. An Act for making a Railway from Anstruther to Saint Andrews, in the county of Fife; and for other purposes.
- clxxxi. An Act to make further provision for regulating the supply of Gas by the Gas Light and Coke Company, the Commercial Gas Company, and the South Metropolitan Gas Company, and to amend the Acts relating to the said Companies.
- clxxxii. An Act to confer further powers on the Halesowen Railway Company; and for other purposes.
- clxxxiii. An Act for enabling the London and South-western Railway Company to execute further Works and to acquire further Lands for the improvement of their Railways; for confirming certain agreements; and for conferring other Powers upon the Company and other Companies; and for other purposes.
- clxxxiv. An Act to authorise the Belfast Central Railway Company to make new Railways and Works; to lay additional Rails on their existing Railways and on certain parts of the Belfast and County Down and Belfast, Holywood, and Bangor Railways; and for other purposes.
- clxxxv. An Act to authorise the construction of Tramways in and near to the towns of Coventry and Bedworth, and from Coventry to Bedworth, in the county of Warwick; and for other purposes.
- clxxxvi. An Act for incorporating the Freshwater, Yarmouth, and Newport Railway Company; and for other purposes.
- clxxxvii. An Act for extending the time for completing the Neath Harbour Works; for authorising the Harbour Commissioners to borrow further Money; and for other purposes.
- clxxxviii. An Act for enabling the Caledonian Railway Company to make Railways and other Works, acquire lands, and abandon portions of Works in the counties of Lanark, Renfrew, and Edinburgh; to maintain, work, and contribute to the Alloa Railway; to establish an Accident and Life Insurance Fund for their servants, and to raise additional Money; for extending the authorised periods for completion of certain Railways in Lanarkshire, and acquisition of Lands in connexion therewith, and sale of superfluous Lands; and for other purposes.
- clxxxix. An Act to alter the Filey Pier and Harbour Order, 1878, and to dissolve the Company empowered thereby, and re-incorporate them with fresh powers.
- cx. An Act for incorporating a Company and authorising them to make and maintain a Railway from Hounslow to Ealing, in the county of Middlesex; and for other purposes.
- cxci. An Act to authorise the North Staffordshire Railway Company to make a railway to connect their Churnet Valley Line with the Stoke Branch therefrom; to purchase additional Lands, and make certain Sidings also; for extending the time for the sale of certain superfluous Lands, and to alter certain of the provisions of the existing Acts with respect to Rates and Charges; and for other purposes.

- cxcii. An Act for empowering the Ramsgate and Margate Tramways Company to construct additional Tramways; to raise further Capital; to use Steam or other Mechanical Power; and for other purposes.
- cxci. An Act for rendering valid certain Letters Patent granted to John Muirhead the younger, and Alexander Muirhead, of Regency Street, in the City of Westminster, for the Invention of Improvements in Electric Telegraphs.
- cxci. An Act to authorise the construction of the Edinburgh Suburban and Southside Junction Railway; and for other purposes.
- cxci. An Act to incorporate a Company for the construction of the Yarmouth Union Railway; and for other purposes.
- cxci. An Act for empowering the Brentford and Isleworth Tramways Company to construct new Tramways, in the county of Middlesex; and for other purposes.
- cxci. An Act to authorise the construction of a Railway and Tramways in the county of Antrim, to be called "The Giants Causeway, Portrush, and Bush Valley Railway and Tramways;" and for other purposes.
- cxci. An Act for incorporating the Glenariff Railway and Pier Company; and for other purposes.
- cxci. An Act to authorise the construction and maintenance of the Hull, Barnsley, and West Riding Junction Railways, and of a Dock and other Works in connexion therewith; and for other purposes.
- cc. An Act for conferring further powers on the Teign Valley Railway Company in relation to their undertaking; and for other purposes.
- cci. An Act for incorporating the Skipton and Kettlewell Railway Company, and authorising them to make and maintain the Skipton and Kettlewell Railway and for other purposes.
- ccii. An Act for conferring on the South-eastern Railway Company further powers with reference to their own undertakings, and those of other Companies; and for other purposes.
- cciii. An Act to incorporate a Company for the Construction of the Southsea Railway; and for other purposes.
- P. cciv. An Act to confirm a Provisional Order under the Drainage and Improvement of Lands (Ireland) Act, 1863, and the Acts amending the same.
- P. ccv. An Act to confirm a Provisional Order made by the Education Department under the Elementary Education Act, 1870, to enable the School Board for London to put in force the Lands Clauses Consolidation Act, 1845, and the Acts amending the same.
- P. ccvi. An Act to enable the Commissioners of Public Works in Ireland to lend the sum of One thousand pounds to the Mulkear Drainage District Board.
- ccvii. An Act for making further Provision respecting the borrowing of money by the Corporation of Liverpool; and for other purposes.
- ccviii. An Act to make further Provision respecting the borrowing of Money by the Corporation of Nottingham; and for other purposes.
- ccix. An Act to authorise the construction of Railways in and near to the District of Cathcart, on the south side of Glasgow; and for other purposes.
- ccx. An Act to revive and extend the powers of the Midland Counties and Shannon Junction Railway Company for the purchase of lands and execution of works; to facilitate the completion and beneficial working of their undertaking; to change the name of the Company; and for other purposes.
- ccxi. An Act to authorise the construction of a Railway in the county of Clare, to be called the Ennis and West Clare Railway; and for other purposes.
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PRIVATE ACTS,  
PRINTED BY THE QUEEN'S PRINTER,  
AND WHEREOF THE PRINTED COPIES MAY BE GIVEN IN EVIDENCE.

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1. An Act to extend the Power of Sale contained in the Resettlement of the Blenheim Settled Estates to the Sunderland Library; and for other purposes.
  2. An Act for giving further effect to a Compromise of certain opposing claims affecting the Estates of William Sydney, Earl of Leitrim, deceased, in the counties of Leitrim, Donegal, Galway, and Kildare in Ireland; and for giving effect to a further arrangement respecting the said Estates.
  3. An Act to enable the Trustees of the Settled Estates of the Right Honourable St. George Henry Earl of Lonsdale, to purchase certain Mines of Coal and other Minerals belonging to the Crown, and lying under the Sea adjoining the Coast of the county of Cumberland; and to raise Money for effecting such Purchase by mortgage of the Settled Estates, or parts thereof; and for other purposes.
  4. An Act for making further provisions concerning the Settled Estates of the Marquess of Abergavenny.
  5. An Act to confer upon the Trustees of the Family Estates, settled by the Will of the Most Noble Francis Godolphin D'Arcy, seventh Duke of Leeds, powers of sale and exchange and powers to raise Moneys for the purposes of the Settled Estates; and for other purposes.
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PRIVATE ACTS,  
NOT PRINTED.

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| <p>An Act to naturalize Hermann Katz, and to grant to and confer upon him all the rights, privileges, and capacities of a natural-born Subject of Her Majesty the Queen.</p> <p>An Act to relieve the Right Honourable George Frederick William Baron Byron from certain disabilities and penalties in consequence of his having sat and voted in the House of Peers without being duly qualified by making and subscribing the Oath prescribed by Law.</p> | <p>An Act to naturalise Edward Max Posen, and to grant to and confer upon him all the rights, privileges, and capacities of a natural-born Subject of Her Majesty the Queen.</p> <p>An Act to relieve the Right Honourable William Conyngham, Baron Plunket, from certain disabilities and penalties in consequence of his having sat and voted in the House of Peers without being duly qualified by making and subscribing the Oath prescribed by Law.</p> |
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# INDEX

TO THE

## PUBLIC GENERAL ACTS,

43 & 44 VICTORIA.—A.D. 1880.

**NOTE.**—The capital letters placed after the chapter have the following signification :—

E. <i>that the Act relates to</i>	England (and Wales, if it so extend).
S.       "       "	Scotland exclusively.
I.       "       "	Ireland exclusively.
E. & I.   "       "	England and Ireland.
E. & S.   "       "	England and Scotland.
U.K.     "       "	Great Britain and Ireland (and Colonies, if it so extend).
C.       "       "	The Colonies, or any of them.

**\*\*** Several Public Acts of a Local Character which have been placed among the Local Acts are included in this Index. These Acts are distinguished by their Chapters being given in Roman Numerals.

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| Inclosure, &c. Orders Confirmation; to confirm (in pursuance of a Report of the Inclosure Commissioners for England and Wales) the Provisional Order for the regulation of certain Lands known as Abbotside Common, situate in the parish of Aysgarth (York) - | lxiv. E.     | Inhabited House Duties. See Inland Revenue.   |             |
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| — to confirm a similar Order for the inclosure of certain lands known as Hendy Bank Common, situate in the parish of Cefnlllys (Radnor) -  | lxxxvii. E.  | — to repeal the duties on Malt, to grant and alter certain duties of Inland Revenue, and to amend the Laws in relation to certain other duties. [Malt; Brewers and Excise Duty on Beer; Sale of Liquors by Retail; Income Tax; Stamps] -  | 20. U.K.    |
| — to confirm a similar Order for the inclosure of certain Lands known as the Common Fields, the Common Meadow Lands, the Cow Common, the Green, the Meres, Baulks, and other waste lands, situate in the parish of Steventon (Berks) -                         | lxxxviii. E. | — to consolidate and amend the Law relating to the Manufacture and Sale of Spirits -  | 24. U.K.    |
| — to confirm a similar Order for the inclosure of certain Lands known as Llandegley Rhos Common, situate in the parish of Glaschw (Radnor) -   | lxxxix. E.   | Inland Revenue Offices (Holidays). See Revenue Offices (Holidays).  |             |
| — to confirm similar Orders for the regulation of certain Lands forming part of the Lizard Common, and situate in the parish of Landewednack (Cornwall); and for the inclosure of certain other lands forming the remainder of the said common -               | xc. E.       | Interments; to amend the Burial Laws -  | 41. E.      |
| — to confirm a similar Order   |              | Ireland, Acts relating exclusively to. See Births and Deaths Registration. Census. County Court Jurisdiction in Lunacy. Drainage and Improvement of Lands. Glebe Loan Acts. Irish Loans. Kinsale Harbour. Local Government Board's (Ireland) Orders Confirmation. Mulkear Drainage District. Railways Construction Facilities. Relief of Distress in Ireland. |             |
|  |              | Irish Loans; to explain and amend Sections seven, thirteen, and fourteen of the Relief of Distress (Ireland) Amendment Act, 1880 (43 & 44 Vict. c. 14.)   | 44. I.      |

Irish Loans. *See also* Relief of Distress in Ireland. Chap.

Isle of Man Loans; to provide for the raising of Loans on behalf of the Isle of Man - 8. U.K.

Judicial Factors; to provide for the appointment of Judicial Factors in Sheriff Courts in Scotland - 4. S.

Justice, Administration of. *See* Bastardy. Births and Deaths Registration. County Court Jurisdiction in Lunacy. Courts of Justice Building Acts Amendment. Criminal Law Amendment. Employers' Liability. Expiring Laws Continuance. Fraudulent Debtors. Indecent Assaults on Females. Industrial Schools Acts Amendment. Merchant Shipping. Sheriff Courts. Wild Birds Protection.

Kinsale Harbour; to make further provision with respect to the powers of the Commissioners for Public Works in Ireland in relation to a grant and loan for the Improvement of Kinsale Harbour, and to enable the Town Commissioners of Kinsale to guarantee a loan and levy rates for the purposes of such Improvement clxxiv. I.

Land Drainage Order Confirmation; to confirm a Provisional Order under the Land Drainage Act, 1861 (24 & 25 Vict. c. 133.), relating to Frodsham and Helsby Improvements, situated in the parish of Frodsham (Chester) - lxxxii. E.

— *See also* Drainage and Improvement of Lands.

Land Tax. *See* Taxes Management.

Leith Improvement Scheme; to confirm a Provisional Order of one of Her Majesty's Principal Secretaries of State (under the Artizans and Labourers Dwellings Act, 1875), for the Improvement of Unhealthy Areas in the Parliamentary Burgh of Leith - clxxv. E.

Liquors, Sale of. *See* Inland Revenue.

Local Government Board's Orders Confirmation:— Chap.

(a) *Gas and Water Works Facilities Act, 1870, and Public Health Act, 1875:*  
— to confirm a Provisional Order of the Local Government Board under the provisions of the Gas and Water Works Facilities Act, 1870 (33 & 34 Vict. c. 70.), and the Public Health Act, 1875 (38 & 39 Vict. c. 55.), relating to the Borough of Conway - xxxiii. E.

(b) *Highways and Locomotives Act, 1878:*  
— to confirm a Provisional Order of the Local Government Board under the provisions of the Highways and Locomotives (Amendment) Act, 1878 (41 & 42 Vict. c. 77.), relating to the County of Salop - xxxiv. E.

(c) *Poor Law Acts, 1867, &c.:*  
— to confirm a Provisional Order of the Local Government Board under the provisions of the Poor Law Amendment Act, 1867 (30 & 31 Vict. c. 106.), relating to the City of Canterbury, and an Order of the Local Government Board under the provisions of the Divided Parishes and Poor Law Amendment Act, 1876 (39 & 40 Vict. c. 61.), as amended and extended by the Poor Law Act, 1879 (42 & 43 Vict. c. 12.), relating to the Parishes of Bepton, Chithurst, Farnhurst, Iping, Kirdford, Linch, Linchmere, Lodsworth, Lurgashall, Selham, Stedham, Terwick, Trotton, and Woolbeding, and to the Tything of North Ambersham - lx. E.

— to confirm an Order of the Local Government Board under the provisions of the Divided Parishes and Poor Law Amendment Act, 1876 (39 & 40 Vict. c. 61.), as amended and extended by the Poor Law Act, 1879 (42 & 43 Vict. c. 12.), relating to the Parishes of Bowers Gifford, Hadleigh, Laidon, Leigh,

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|---|----------|----|--|
|   | Chap.    |    |  |
| North Benfleet, Pitsea, Prittwell, South Benfleet, Southchurch, and Vange -   | xciii.   | E. |  |
| Local Government Board's Orders Confirmation :—   |          |    |  |
| (d) <i>Public Health Act, 1875</i> :—   |          |    |  |
| — to confirm certain Provisional Orders of the Local Government Board relating to the Boroughs of Abingdon and Beverley, the Local Government District of Briton Ferry, the Borough of Burnley, the Local Government District of Buxton, the Borough of Cardigan, the Town of Hove, the City of Manchester, the Improvement Act District of Middleton and Tonge, the Boroughs of Newbury and Southport, the Improvement Act District of West Hartlepool, and the Local Government District of Wirksworth -                              | xxxvi.   | E. |  |
| — to confirm certain similar Orders relating to the Improvement Act District of Abergavenny, the Local Government Districts of Baldock, Bredbury, Bromsgrove, Cuckfield, and Ebbw Vale, the Hanley, Stoke, and Fenton Joint Hospital District, the Local Government District of Heckmondwike, the Borough of Pembroke, and the Local Government Districts of Swindon, New Town and Withington -   | lviii.   | E. |  |
| — to confirm certain similar Orders relating to the Rural Sanitary Districts of the Amersham, Ashby-de-la-Zouch, and Basford Unions, the Borough of Chard, the Local Government District of Croydon, the Borough of Cheltenham, the Rural Sanitary District of the Hendon Union, the Local Government Districts of Hornsey and Leyton, the City of Lincoln, the Borough of Plymouth, the Local Government District of Redditch, the Rural Sanitary District of the Shardlow Union, and the Local Board of Health District of Woolwich - | lix.     | E. |  |
| — to confirm certain similar Orders relating to the Local Government District of Ashford, the Improvement Act District of Bournemouth, the Urban Sanitary District of Folkestone, the Local Government Districts of Ilfracombe and Mirfield, the Rural Sanitary District of the Reigate Union, and the Port of Wichester -  | lxii.    | E. |  |
| — to confirm certain similar Orders relating to the Rural Sanitary District of the Alnwick Union, the Borough of Barnsley, the Local Government District of Brentford, the Rural Sanitary District of the Durham Union, the Local Government Districts of Ealing, East Dereham, and Mountain Ash, the Boroughs of Newcastle-under-Lyme and Penzance, the Rural Sanitary Districts of the Rothbury and Settle Unions, and the Local Government District of Torquay -   | lxxxiii. | E. |  |
| — to confirm certain similar Orders relating to the Borough of Kingston-upon-Hull and the Improvement Act District of Ramsgate -  | lxxxiv.  | E. |  |
| — to confirm certain similar Orders relating to the Borough of Aberavon, the Local Government District of Ashton-in-Makerfield, the City of Canterbury, the Local Government District of Cleator Moor, the Borough of Congleton, the Local Government District of Horncastle, the City of Lincoln, the Local Government District of Littlehampton, the Improvement Act District of Llandudno, the Local Government Districts of Ossett-cum-Gawthorpe and Oswaldtwistle, the City of Saint Alban, and the Borough of Sunderland -        | lxxxvi.  | E. |  |
| — to confirm certain similar Orders relating to the Local Government District of Eastbourne, the Improvement Act District of Herne Bay, the Local Government Districts of Northwich and Puddsey, the Improvement Act District of Ramsgate, and the Local Government District of West Ham -  | cxixii.  | E. |  |

	Chap.		Chap.
Local Government Board's Orders Confirmation; to confirm certain similar Orders relating to the Improvement Act District of Bethesda, the Borough of Birmingham, the Local Government District of Haworth, the Lower Thames Valley Main Sewerage District, the Borough of Rochdale, the Rochester and Chatham Joint Hospital District, the Boroughs of Rotherham, Stockton, and Middlesbrough, and the City of York -	clxxviii. E.	Man, Isle of; to provide for the raising of Loans on behalf of the Isle of Man -	8. U.K.
Local Government Board's (Ireland) Orders Confirmation; to confirm certain Provisional Orders of the Local Government Board for Ireland, under the Public Health (Ireland) Act, 1878 (41 & 42 Vict. c. 52.), relating to the town of Ballinasloe, and to the Ballymacormick Burial Ground, and to the towns of Clonmel and Tralee; and to Waterworks in the town of Wicklow -	xxxviii. I.	Married Women's Policies of Assurance; to extend to Scotland the Facilities for effecting Policies of Assurance for the Benefit of Married Women and Children now in force in England and Ireland -	26. S.
— to confirm certain similar Orders relating to the towns of Banbridge, Monaghan, Thurles, and Trim, and to Waterworks in the town of Kinsale, and to the Skule Bog United District -	xl. I.	Merchant Seamen; to amend the Law relating to the Payment of Wages and Rating of Merchant Seamen -	16. U.K.
— to confirm certain similar Orders relating to a new Street in Dublin, and to Waterworks in the town of Fermoy -	lxiii. I.	Merchant Shipping; to amend the Merchant Shipping Act, 1854 (17 & 18 Vict. c. 104.), as to joint Owners of Ships -	18. U.K.
— to confirm a certain Provisional Order of the Local Government Board for Ireland made under the Artizans and Labourers Dwellings Improvement Act, 1875 (38 & 39 Vict. c. 36.), relating to the city of Dublin; and a certain Provisional Order of the said Board made under the Public Health (Ireland) Act, 1878 (41 & 42 Vict. c. 52.), relating to Waterworks in the city of Armagh -	clxxi. I.	— to amend the Merchant Shipping Act, 1854, so far as regards certain Fees and Expenses and Sums receivable and payable by the Board of Trade -	22. U.K.
Lunacy; to confer Jurisdiction in Lunacy upon the County Courts in Ireland in certain cases -	39. I.	— to provide for the safe carriage of Grain Cargoes by Merchant Shipping -	43. U.K.
Malt Duties; to repeal the Duties on Malt, &c. -	20. U.K.	Metropolis Improvement Scheme; to confirm the Provisional Order of one of Her Majesty's Principal Secretaries of State (under the Artizans and Labourers Dwellings Act, 1875), for the modification of the Metropolis (High Street, Islington) Improvement Scheme -	cxxxi. E.
		Metropolitan Board of Works; for further amending the Acts relating to the raising of Money by the Metropolitan Board of Works; and for other purposes relating thereto -	25. E.
		Metropolitan Commons Acts; to confirm a Scheme under the Metropolitan Commons Act, 1866 (29 & 30 Vict. c. 122.), and the Metropolitan Commons Amendment Act, 1869, (32 & 33 Vict. c. 107.), relating to Staines Commons -	xxxvii. E.
		Money Orders; relating to Post Office Money Orders -	33. U.K.
		Mulkear Drainage District; to enable the Commissioners of Public Works in Ireland to lend the sum of One thousand pounds to the Mulkear Drainage District Board -	ccvi. I.

	Chap.		Chap.
Oxford and Cambridge Universities; to authorise the Extension and further Limitation of of the Tenures of certain University and College Emoluments limited or to be limited by orders of the Oxford and Cambridge Commissioners -	11. E.	Board (Ireland). Metropolis Improvement. Metropolitan Commons. Piers and Harbours. Public Health (Scotland). Tramways.	
— to amend the Universities and College Estates Act, 1858, (21 & 22 Vict. c. 44.) -	46. E.	Public Health Act, 1875. See Local Government Board's Orders Confirmation (a) (d).	
Pier and Harbour Orders Confirmation; to confirm certain Provisional Orders made by the Board of Trade under the General Pier and Harbour Act, 1861 (24 & 25 Vict. c. 45.), relating to Aldrington, Anstruther, Bouldnor, Broadstairs, Carrickfergus, Castle Bay (Barra), Llandudno, and Tralee and Fenit; and to amend the Cattewater Harbour Order, 1876 (39 & 40 Vict. c. xl.) -	lxxxv. U.K.	Public Health (Ireland) Act, 1878. See Local Government Board's (Ireland) Orders Confirmation.	
Policies of Assurance; to extend to Scotland the Facilities for effecting Policies of Assurance for the Benefit of Married Women and Children now in force in England and Ireland -	26. S.	Public Health (Scotland) Act, 1867; to confirm a Provisional Order made under the Public Health (Scotland) Act, 1867 (30 & 31 Vict. c. 101.), relating to the Borough of Lanark -	xc. S.
Poor—Poor Law; to extend the Union Assessment Committee Acts to single parishes under separate Boards of Guardians — to render valid certain Orders in Bastardy -	7. E. 32. E.	— to confirm a similar Order relating to the Parish of Blantyre -	xcii. S.
Poor Law Acts, 1867, &c. See Local Government Board's Orders Confirmation (c).		Public Works Loans; to appoint Public Works Loan Commissioners; to grant Money for the purpose of Loans by the Public Works Loan Commissioners and the Commissioners of Public Works in Ireland; and for other purposes relating to Loans by those Commissioners -	1. U.K.
Population of United Kingdom. See Census.		— See also Kinsale Harbour. Mulkear Drainage District. Relief of Distress in Ireland.	
Post Office; relating to Post Office Money Orders -	33. U.K.	Rabbits and Hares. See Ground Game.	
— to enable Her Majesty's Postmaster-General to enlarge and acquire a site for the South-western (of London) District Post Office -	xciv. E.	Railways Construction Facilities; to amend the Railways Construction Facilities Act, 1864 (27 & 28 Vict. c. 121.) -	31. I.
Property Tax. See Inland Revenue.		Registration of Births and Deaths; to amend the Law in Ireland relating to the Registration of Births and Deaths -	13. I.
Provisional Orders Confirmation. See Drainage, &c. of Lands (Ireland). Education Department. Gas and Water. General Police and Improvement (Scotland). Inclosure, &c. Land Drainage. Leith Improvement. Local Government Board. Local Government		Relief of Distress in Ireland; to amend the Relief of Distress (Ireland) Act, 1880 (43 Vict. c. 4.); and for other purposes relating thereto -	14. I.
		— to explain and amend the Act 42 & 43 Vict. c. 14. -	44. I.
		— to amend the Railways Construction Facilities Act, 1864 (27 & 28 Vict. c. 121.) -	31. I.
		Representation of the People (Scotland); to amend the Representation of the People (Scotland) Act, 1868 (31 & 32 Vict. c. 48.) -	6. S.

- Revenue Offices Holidays; to make provision for Holidays in the Customs and Inland Revenue Offices in Scotland - 17. S.
- Savings Banks; to amend the Savings Banks Acts (26 & 27 Vict. c. 25., and 26 & 27 Vict. c. 87.) - 36. U.K.
- Schools. *See* Education and Schools. Industrial School Acts Amendment.
- Scotland, Acts relating exclusively to. *See* Census. Debtors. General Police and Improvement. House Occupiers in Counties, &c. Judicial Factors. Married Women's Policies of Assurance. Public Health (Scotland) Act. Revenue Offices Holidays. Sheriff Courts.
- Sea Birds Protection; to amend the Laws relating to the Protection of Wild Birds - 35. U.K.
- Seamen's Wages; to amend the Law relating to the Payment of Wages and Rating of Merchant Seamen - 16. U.K.
- Sheriff Courts (Scotland); to provide for the appointment of Judicial Factors in Sheriff Courts in Scotland - 4. S.
- South-western (of London) District Post Office; to enable Her Majesty's Postmaster-General to enlarge and acquire a site for the South-western (of London) District Post Office - xciv. E.
- Spirits; to consolidate and amend the Law relating to the Manufacture and Sale of Spirits - 24. U.K.
- *See also* Inland Revenue.
- Staines Common. *See* Metropolitan Commons Acts.
- Stamps. *See* Inland Revenue.
- Statutes Continuance; to continue various expiring Laws - 48. U.K.
- *See also* Turnpike Acts Continuance.
- Statutes (Definition of Time); to remove doubts as to the meaning of Expressions relative to Time occurring in Acts of Parliament, Deeds, and other legal instruments - 9. U.K.
- Taxes Management; to consolidate enactments relating to certain Taxes and Duties under the Management of the Board of Inland Revenue. [Land Tax; Inhabited House Duties; Property and Income Tax] - 19. U.K.
- Time, Definition of. *See* Statutes (Definition of Time).
- Tramways Orders Confirmation; for confirming certain Provisional Orders made by the Board of Trade under the Tramways Act, 1870 (33 & 34 Vict. c. 78.), relating to Bath Tramways, Birkdale and Southport Tramways, Bristol Tramways (Extensions), Cambridge Street Tramways (Extension), Cardiff District and Penarth Harbour Tramways, Croydon Street Tramways (Extensions), Darlington Tramways, Dudley, Sedgley, and Wolverhampton Tramways, Ipswich Tramways (Extensions), Llanelly Tramways, Merthyr Tramways, Peterborough Tramways, Staffordshire Tramways (Additional Powers), Stockton-on-Tees and District Tramways, Sunderland Tramways (use of Mechanical Power), Withington Local Board Tramways, and Wolverhampton Tramways (use of Mechanical Power) - clxxii. E.
- for confirming certain similar Orders relating to Birmingham and Aston Tramways, Blackpool St. Anne's-on-the-Sea and Lytham Tramways, Bradford Corporation Tramways, Carlisle and District Tramways, Folkestone, Sandgate, and Hythe Tramways, North Staffordshire Tramways, Rothsay Tramways, Walsall and District Tramways, Walton-on-the-Hill Tramways, and Woolwich and Plumstead Tramways - clxxiii. E.
- Treasury Bills. *See* Exchequer Bills and Bonds.
- Turnpike Acts Continuance; to continue certain Turnpike Acts, and to repeal certain other Turnpike Acts; and for other purposes connected therewith - 12. E.

Union Assessment; to extend the Union Assessment Committee Acts to single parishes under separate Boards of Guardians - - -	Chap.	Universities and College Estates; to amend the Universities and College Estates Act, 1858 (21 & 22 Vict. c. 44.) - -	Chap.
Universities of Oxford and Cambridge; to authorise the Extension and further Limitation of the Tenures of certain University and College Emoluments limited or to be limited by orders of the Oxford and Cambridge Commissioners -	7. E.	Wild Birds Protection; to amend the Laws relating to the Protection of Wild Birds - Workmen, Compensation to. See Employers' Liability.	46. E.
	11. E.	Young Persons; to amend the Criminal Law as to Indecent Assaults on Young Persons -	35. U.K.
			45. E. & I.

## TABLES

SHOWING

## THE EFFECT OF THE SESSION'S LEGISLATION.

TABLE A.—Acts of 43 &amp; 44 Vict. (in order of Chapter), showing their effect on former Acts.

TABLE B.—Acts of former Sessions (in chronological order) Repealed and Amended by Acts of 43 &amp; 44 Vict.

(A.)

Acts of 43 &amp; 44 Vict. (in order of Chapter), showing their effect on former Acts.

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| <p>Oh.<br/>1. <i>Public Works Loans</i> [U.K.]<br/>Appoints Commissioners for five years under 38 &amp; 39 Vict. c. 89., Public Works Loans Act, 1875.<br/>Remits interest on loans to Anstruther Harbour Commissioners, incorporated by 23 &amp; 24 Vict. c. 39.<br/>Remits instalments of principal and interest in respect of River Corrib mill power, chargeable under 5 &amp; 6 Vict. c. 89., Drainage, &amp;c., of Lands (Ireland) Act, 1842.<br/>Grants 5,000,000<i>l.</i> for Loans under 38 &amp; 39 Vict. c. 89. and 42 &amp; 43 Vict. c. 77., Public Works Loans Acts, 1875 and 1879.<br/>Grants 1,100,000<i>l.</i> for Loans by Commissioners of Public Works in Ireland under 40 &amp; 41 Vict. c. 27. and 42 &amp; 43 Vict. c. 77.</p> <p>2. <i>Glebe Loan (Ireland) Acts Amendment</i> [I.]<br/>Amends 33 &amp; 34 Vict. c. 112., 34 &amp; 35 Vict. c. 100., 38 &amp; 39 Vict. c. 30., and 41 &amp; 42 Vict. c. 6.</p> <p>3. <i>Consolidated Fund</i> (4,925,320<i>l.</i>) [U.K.]</p> <p>4. <i>Judicial Factors (Scotland)</i> [S.]<br/>Amends and applies 12 &amp; 13 Vict. c. 51., for protection of property of incapacitated persons in Scotland.<br/>Applies 17 &amp; 18 Vict. c. 91., Valuation of Lands, &amp;c. (Scotland) Act, 1854.</p> | <p>Oh.<br/>5. <i>County Bridges Loans Extension</i> [E.]<br/>Extends powers of borrowing under 4 &amp; 5 Vict. c. 49., County Bridges Act, 1841.<br/>Construes Act with 41 &amp; 42 Vict. c. 77., Highways and Locomotives (Amendment) Act, 1878.</p> <p>6. <i>House Occupiers in Counties Disqualification Removal (Scotland)</i> [S.]<br/>Amends 31 &amp; 32 Vict. c. 48., Representation of the People (Scotland) Act, 1868.</p> <p>7. <i>Union Assessment</i> [E.]<br/>Amends 25 &amp; 26 Vict. c. 103. and 27 &amp; 28 Vict. c. 39., Union Assessment Committee Acts, 1862 and 1864.<br/>Applies 4 &amp; 5 Will. 4. c. 76., Poor Law Amendment Act, 1834.<br/>Exempts the Metropolis (as defined by 32 &amp; 33 Vict. c. 67., Valuation, Metropolis Act, 1869) from operation of Act.</p> <p>8. <i>Isle of Man Loans</i> [U.K.]<br/>Repeals s. 4. of 26 &amp; 27 Vict. c. 86., Isle of Man Harbours Act, 1863.<br/>Repeals part of s. 6. of 29 &amp; 30 Vict. c. 23., Isle of Man Customs, &amp;c. Act, 1866.<br/>Repeals part of s. 20. of 35 &amp; 36 Vict. c. 23., Isle of Man Harbours Act, 1872.<br/>Repeals s. 7. of 37 &amp; 38 Vict. c. 8., Isle of Man Harbours Act, 1874.</p> |
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Table A.—Acts of 43 & 44 Vict. (in order of Chapter), &c.—*continued*.

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| <p>Ch.<br/>8. <i>Isle of Man Loans</i>—cont.<br/>Applies 38 &amp; 39 Vict. c. 89., Public Works Loans Act, 1875.<br/>Applies 38 &amp; 39 Vict. c. 83., Local Loans Act, 1875.<br/>Applies 40 &amp; 41 Vict. c. 59., Colonial Stock Act, 1877.</p> <p>9. <i>Statutes (Definition of Time)</i> [U.K.]<br/>Removes Doubts as to meaning of Expressions relating to Time occurring in Acts of Parliament, &amp;c.</p> <p>10. <i>Great Seal</i> [U.K.]<br/>Amends 14 &amp; 15 Vict. c. 82., Great Seal Act, 1851.<br/>Amends 38 &amp; 39 Vict. c. 77., Supreme Court of Judicature Act, 1875.<br/>Amends 39 &amp; 40 Vict. c. 59., Appellate Jurisdiction Act, 1876.</p> <p>11. <i>Universities of Oxford and Cambridge (Limited Tenures)</i> [E.]<br/>Amends 40 &amp; 41 Vict. c. 48., Universities of Oxford and Cambridge Act, 1877.</p> <p>12. <i>Annual Turnpike Acts Continuance</i> [E.]<br/>Repeals and continues certain Local Acts as set forth in Schedule.</p> <p>13. <i>Births and Deaths Registration (Ireland)</i> [I.]<br/>Repeals (in part) 26 &amp; 27 Vict. c. 11., Registration of Births and Deaths (Ireland) Act, 1863.<br/>Applies 41 &amp; 42 Vict. c. 52. and 42 &amp; 43 Vict. c. 57., Public Health (Ireland) Acts, 1878 and 1879.<br/>Applies 14 &amp; 15 Vict. c. 93., Petty Sessions (Ireland) Act, 1851.</p> <p>14. <i>Relief of Distress (Ireland) Act Amendment</i> [I.]<br/>Amends 43 Vict. c. 4., Relief of Distress (Ireland) Act, 1880.<br/>Amends 43 Vict. c. 1., Seeds Supply (Ireland) Act, 1880.<br/>Amends and applies 9 &amp; 10 Vict. c. 3., Fishery Piers Act, 1846.<br/>Applies 16 &amp; 17 Vict. c. 136., Grand Jury Presentments (Ireland) Act, 1853.<br/>Applies 42 &amp; 43 Vict. c. 77., Public Works Loans Act, 1879.<br/>Defines "Improvements" under 33 &amp; 34 Vict. c. 46., Landlord and Tenant (Ireland) Act, 1870.</p> <p>15. <i>Industrial Schools Acts Amendment</i> [U.K.]<br/>Amends 29 &amp; 30 Vict. c. 118., Industrial Schools Act, 1866.<br/>Amends 31 &amp; 32 Vict. c. 25., Industrial Schools (Ireland) Act, 1868.</p> | <p>Ch.<br/>16. <i>Merchant Seamen (Payment of Wages and Rating)</i> [U.K.]<br/>Repeals (in part) 17 &amp; 18 Vict. c. 104., Merchant Shipping Act, 1854.<br/>Construes Act with Merchant Shipping Acts, 1854 to 1876.<br/>Applies (as to Savings Banks) 24 &amp; 25 Vict. c. 14., 26 &amp; 27 Vict. c. 87., 17 &amp; 18 Vict. c. 104. s. 180., and 19 &amp; 20 Vict. c. 41.<br/>Applies 38 &amp; 39 Vict. c. 90., Employers and Workmen Act, 1875.</p> <p>17. <i>Revenue Officers (Scotland) Holidays</i> [S.]<br/>Applies 34 &amp; 35 Vict. c. 17., Bank Holidays Act, 1871.</p> <p>18. <i>Merchant Shipping Act (1854) Amendment</i> [U.K.]<br/>Amends s. 37. of 17 &amp; 18 Vict. c. 104., as to Joint Owners of Ships.</p> <p>19. <i>Taxes Management</i> [U.K.]<br/>Consolidates Enactments relating to Land Tax, Inhabited House Duties, and Property and Income Tax.<br/>Repeals Enactments described in the Third Schedule, with certain exceptions and qualifications.<br/>Substitutes a reference to this Act in former Acts as described in the Fourth Schedule.<br/>Applies 5 &amp; 6 Vict. c. 35. and 16 &amp; 17 Vict. c. 34., Income Tax Acts, 1842 and 1853.<br/>Applies 32 &amp; 33 Vict. c. 67., Valuation (Metropolis) Act, 1869.<br/>Applies 33 Geo. 3. c. 55., as to levies and distrainments.</p> <p>20. <i>Inland Revenue</i> [U.K.]<br/>Repeals Excise Duties on Malt and on Sugar used in brewing, &amp;c.<br/>Customs Duties on Malt, &amp;c. to cease: Amends s. 42. of 39 &amp; 40 Vict. c. 36., Customs Consolidation Act, 1876.<br/>Alters Duties on Brewers Licenses, &amp;c., and Licenses for Sale of Liquors by Retail.<br/>Grants additional Duties of Income Tax.<br/>Amends, as to composition for Stamp Duty:—<br/>33 &amp; 34 Vict. c. 24., Metropolitan Board of Works (Loans) Act, 1870.<br/>37 &amp; 38 Vict. c. 26., Canadian Stock Stamp Act, 1874.<br/>40 &amp; 41 Vict. c. 59., Colonial Stock Act, 1877.<br/>Repeals enactments described in Second Schedule.</p> |
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Table A.—Acts of 43 & 44 Vict. (in order of Chapter), &c.—*continued*.

- Ch. 21. *Exchequer Bills and Bonds* (1,500,000.) [U.K.]  
 Applies 29 & 30 Vict. c. 25., Exchequer Bills and Bonds Act, 1866.  
 Applies 40 & 41 Vict. c. 2., Treasury Bills Act, 1877.  
 Applies s. 15 of 29 & 30 Vict. c. 25., as to Forgery of Bonds.
22. *Merchant Shipping (Fees and Expenses)* [U.K.]  
 Amends 17 & 18 Vict. c. 104., { Merchant Shipping  
 „ 25 & 26 Vict. c. 63., { Acts, 1854,  
 „ 39 & 40 Vict. c. 80., { 1862, and  
 „ 14 & 15 Vict. c. 102., { 1876.  
 „ Seamen's Fund Winding-up Act, 1851.  
 Amends 40 & 41 Vict. c. 16., Removal of Wrecks Act, 1877.
23. *Elementary Education* [E.]  
 Amends 33 & 34 Vict. c. 75., { Elementary Education  
 „ 39 & 40 Vict. c. 79., { Acts, 1870 and 1876.
24. *Spirits* [U.K.]  
 Consolidates and amends the Law relating to the Manufacture and Sale of Spirits.  
 Applies Customs Acts to British Spirits in a Customs Warehouse.  
 Repeals (with certain savings and exceptions) the Enactments specified in the Fifth Schedule.
25. *Metropolitan Board of Works (Money)* [E.]  
 Amends 38 & 39 Vict. c. 65., Metropolitan Board of Works (Loans) Act, 1875.  
 Amends 42 & 43 Vict. c. 69., Metropolitan Board of Works (Money) Act, 1879.  
 Applies Metropolitan Board of Works (Loans) Acts, 1869 to 1871.  
 Applies Metropolitan Board of Works (Money) Acts, 1875 to 1879.  
 Empowers Board to expend Moneys for purposes described in the Schedules.  
 Applies 24 & 25 Vict. c. 98., as to Forgery of Metropolitan Bills.
26. *Married Women's Policies of Assurance (Scotland)* [S.]  
 Extends to Scotland certain Facilities for effecting Policies of Assurance contained in 33 & 34 Vict. c. 93., Married Women's Property Act, 1870.
27. *Drainage and Improvement of Lands (Ireland)* [I.]  
 Amends 26 & 27 Vict. c. 88., Drainage and Improvement of Lands (Ireland) Act, 1863.  
 Applies 29 & 30 Vict. c. 49., Drainage Maintenance Act, 1866.
- Ch. 28. *Census (Ireland)* [I.]  
 Applies 14 & 15 Vict. c. 93. and 21 & 22 Vict. c. 100., Petty Sessions (Ireland) Acts, 1851 and 1858.
29. *Courts of Justice Building Act Amendment* [E.]  
 Amends 28 & 29 Vict. c. 48., Courts of Justice Building Act, 1865.
30. *Consolidated Fund* (10,818,274l.) [U.K.]
31. *Railways Construction Act Amendment (Ireland)* [I.]  
 Amends 27 & 28 Vict. c. 121., Railways Construction Facilities Act, 1864.  
 Awards borrowing powers to Irish Railways scheduled in 43 & 44 Vict. c. 14., Relief of Distress (Ireland) Amendment Act, 1880.
32. *Bastardy Orders* [E.]  
 Amends 35 & 36 Vict. c. 65., { Bastardy Laws  
 Amends 36 & 37 Vict. c. 9., { Amendment Acts, 1872 and 1873.
33. *Post Office (Money Orders)* [U.K.]  
 Amends 3 & 4 Vict. c. 96., Post Office Duties Act, 1840.  
 Amends 11 & 12 Vict. c. 88., Post Office Money Order Act, 1848.  
 Applies 24 & 25 Vict. c. 96., Larceny Act, 1861.  
 Applies 24 & 25 Vict. c. 98., Forgery Act, 1861.
34. *Debtors (Scotland)* [S.]  
 Abolishes (with certain exceptions) Imprisonment for Debt in Scotland.  
 Applies 19 & 20 Vict. c. 79., Bankruptcy (Scotland) Act, 1856.  
 Applies 6 & 7 Will. 4. c. 56., { Cessio Acts, 1836 and 1876.  
 Applies 39 & 40 Vict. c. 70., }
35. *Wild Birds Protection* [U.K.]  
 Repeals 32 & 33 Vict. c. 17., Sea Birds Preservation Act, 1869.  
 Repeals 35 & 36 Vict. c. 78., Wild Birds Protection Act, 1872.  
 Repeals 39 & 40 Vict. c. 29., Wild Fowl Preservation Act, 1876.  
 Applies 11 & 12 Vict. c. 43. and 42 & 43 Vict. c. 49., Summary Jurisdiction Acts, 1848 and 1879.  
 Applies 27 & 28 Vict. c. 53., Summary Procedure (Scotland) Act, 1864.  
 Applies 14 & 15 Vict. c. 93., Petty Sessions (Ireland) Act, 1851.
36. *Savings Banks* [U.K.]  
 Amends 26 & 27 Vict. c. 25., Savings Bank Investment Act, 1863.

Table A.—Acts of 43 & 44 Vict. (in order of Chapter), &c.—*continued*.

- Ch.  
36. *Savings Banks*—cont.  
Amends 26 & 27 Vict. c. 87., Trustee Savings Bank Act, 1863.  
Amends 40 & 41 Vict. c. 13., Customs, Inland Revenue, and Savings Bank Act, 1877.  
Applies 32 & 33 Vict. c. 59., Savings Bank Investment Act, 1869.  
Applies 34 & 35 Vict. c. 17., } Bank Holidays  
Applies 38 & 39 Vict. c. 13., } Acts, 1871 and 1875.
37. *Census* [E.]  
Applies Summary Jurisdiction Acts.
38. *Census (Scotland)* [S.]  
Applies 27 & 28 Vict. c. 53., Summary Procedure (Scotland) Act, 1864.
39. *County Court Jurisdiction in Lunacy (Ireland)* [I.]  
Applies 34 & 35 Vict. c. 22., Lunacy Regulation (Ireland) Act, 1871.  
Applies 40 & 41 Vict. c. 56., County Officers and Courts (Ireland) Act, 1877.
40. *Appropriation* [U.K.]  
Repeals part of 43 Vict. c. 13., Appropriation Act (Sess. 1), 1880.
41. *Burial Laws Amendment* [E.]  
Provides for burials in churchyards or graveyards without the rites of the Church of England.  
Amends s. 17. of 37 & 38 Vict. c. 88., Births and Deaths Registration Act, 1874.
42. *Employers' Liability* [U.K.]  
Amends existing Law in respect of liability for personal injuries to Workmen.  
Applies County Court Acts, &c. as to Trial of Action.  
Applies 38 & 39 Vict. c. 90., Employers and Workmen Act, 1875.
43. *Merchant Shipping (Carriage of Grain)* [U.K.]  
Repeals s. 22. of 39 & 40 Vict. c. 80., Merchant Shipping Act, 1876.  
Applies 17 & 18 Vict. c. 104. (Merchant Shipping Act, 1854), and Acts amending the same.
- Ch.  
43. *Merchant Shipping (Carriage of Grain)*—cont.  
Applies s. 5. of 34 & 35 Vict. c. 110., } Merchant  
Applies s. 4. of 36 & 37 Vict. c. 85., } Shipping  
Applies ss. 50. and 51. of 39 & 40 Vict. c. 36., Customs Consolidation Act, 1876. } Acts, 1871 and 1873.
44. *Irish Loans* [I.]  
Amends 43 & 44 Vict., c. 14., Relief of Distress (Ireland) Amendment Act, 1880.  
Amends 42 & 43 Vict. c. 77., Public Works Loans Act, 1879.
45. *Criminal Law Amendment* [E. & I.]  
Amends Law as to Indecent Assaults on Young Persons.
46. *Universities and College Estates Act Amendment* [E.]  
Amends 21 & 22 Vict. c. 44., } Universities and  
Amends 23 & 24 Vict. c. 59., } College Estates  
Acts, 1858 and 1860.
47. *Ground Game* [U.K.]  
Enables Occupiers of Land to protect their Crops from injury and loss by Ground Game.  
Saves provisions of 33 & 34 Vict. c. 57., Gun Licence Act, 1870.
48. *Expiring Laws Continuance* [U.K.]  
Continues (as in Schedule) the following Acts, and Acts amending the same; viz.:—  
5 & 6 Will. 4. c. 27., Linen, &c. Manufactures (Ireland).  
3 & 4 Vict. c. 89., Poor Rates (Stock in Trade Exemption).  
4 & 5 Vict. c. 85., Copyhold, &c. Commissions.  
4 & 5 Vict. c. 89., Application of Highway Rates to Turnpike Roads.  
10 & 11 Vict. c. 32., Landed Property Improvement (Ireland).  
10 & 11 Vict. c. 38., Ecclesiastical Jurisdiction.  
11 & 12 Vict. c. 32., County Cess (Ireland).  
14 & 15 Vict. c. 104., Episcopal, &c. Estates.  
23 & 24 Vict. c. 19., Dwellings for Labouring Classes (Ireland).  
24 & 25 Vict. c. 109., Salmon Fishery (England).  
25 & 26 Vict. c. 97., Salmon Fisheries (Scotland).  
26 & 27 Vict. c. 108., Promissory Notes.  
27 & 28 Vict. c. 20., Promissory Notes, &c. (Ireland).  
28 & 29 Vict. c. 46., Militia Ballots Suspension.  
28 & 29 Vict. c. 63., Locomotives on Roads.  
29 & 30 Vict. c. 62., Prosecution Expenses.  
32 & 33 Vict. c. 43., Irish Church.  
34 & 35 Vict. c. 87., Sunday Observance Prosecutions.  
35 & 36 Vict. c. 33., Parliamentary and Municipal Elections (Ballot).  
38 & 39 Vict. c. 46., Police Expenses.  
39 & 40 Vict. c. 21., Juries (Ireland).

(B.)

Acts of former Sessions (in Chronological Order) Repealed and Amended by Acts of 43 &amp; 44 Vict.

Act repealed or amended.	Subject-matter.	How affected.	Chapter of 43 & 44 Vict.
10 Will. 3. c. 4. ss. 5, 8.	Distillation of Spirits, &c.	Repealed	24
1 Geo. 1. stat. 2. c. 2.	Malt Duties -	Repealed	20
33 Geo. 2. c. 7.			
30 Geo. 3. c. 38. s. 15.	Licences for retailing Spirits -	Repealed	24
43 Geo. 3. c. 99.	Taxes Management—Inland Revenue	Repealed	19
" c. 150.			
" c. 161. in part			
45 Geo. 3. c. 71.			
" c. 95.			
48 Geo. 3. c. 55. s. 7.			
" c. 141. in part			
50 Geo. 3. c. 105.	Sugar used in brewing	Repealed	20
52 Geo. 3. c. 95.			
55 Geo. 3. c. 161.			
56 Geo. 3. c. 58. ss. 2, 3. in part			
1 & 2 Geo. 4. c. 22.			
" c. 113.			
3 Geo. 4. c. 30.			
" c. 88.			
4 Geo. 4. c. 94.			
6 Geo. 4. c. 7. s. 11.			
" c. 32.	Land Tax -	Repealed	19
" c. 58.	Duties and drawbacks on Beer and Malt, &c.	Repealed	20
" c. 80. s. 145.	Spirit Duties -	Repealed	24
" c. 81. ss. 2, 20. in part			
7 & 8 Geo. 4. c. 52.	Malt Duties -	Repealed	20
11 Geo. 4. & 1 Will. 4. c. 17.			
" c. 31.	Duties on Cyder, Beer, and Ale, &c. -	Repealed	20
" c. 51. in part.			
1 & 2 Will. 4. c. 18.	Land and Assessed Taxes -	Repealed	19
" c. 55. in part	Malt Duties -	Repealed	20
4 & 5 Will. 4. c. 60. in part	Taxes Management—Inland Revenue	Repealed	19
5 & 6 Will. 4. c. 20. in part			
" c. 64. ss. 10-13.			
6 & 7 Will. 4. c. 65. ss. 10-12.	Malt Duties -	Repealed	20
7 Will. 4. & 1 Vict. c. 49.			
1 Vict. c. 61. s. 3.	Assessed Taxes -	Repealed	19
3 & 4 Vict. c. 96.	Post Office Duties -	Amended	33
4 & 5 Vict. c. 49.	County Bridges -	Amended	5
5 & 6 Vict. c. 30.	Use of Roasted Malt in colouring Beer	Repealed	20
" c. 37. s. 7.	Assessed Taxes, &c. -	Repealed	19
6 & 7 Vict. c. 24.			
7 & 8 Vict. c. 46.	Fishery Piers -	Amended	14
9 & 10 Vict. c. 3.			
" c. 56.	Assessed Taxes and Income Tax	Repealed	19
10 & 11 Vict. c. 5.	Sugar used in brewing Beer -	Repealed	20
11 & 12 Vict. c. 88.	Post Office Money Orders -	Amended	33
12 & 13 Vict. c. 51.	Judicial Factors (Scotland) -	Amended	4

Table B.—Acts of former Sessions repealed and amended—*continued*.

Act repealed or amended.	Subject-matter.	How affected.	Chapter of 43 & 44 Vict.
14 & 15 Vict. c. 82. - -	Great Seal - - - -	Amended	10
„ c. 102. - -	Seamen's Fund Winding-up - -	Amended	22
17 & 18 Vict. c. 1. s. 5. - -	Assessed Taxes and Income Tax - -	Repealed	19
„ c. 27. - -	Duties of Excise - - - -	Repealed	20
„ c. 30. - -	Duties of Excise on Sugar made in the United Kingdom.	Repealed	20
„ c. 85. - -	Land and Assessed Taxes, &c. - -	Repealed	19
„ c. 104. - -	Merchant Shipping - - - -	Amended	16, 18, and 22.
18 & 19 Vict. c. 38. (except s. 3.) - -	Use of Spirit of Wine in Arts and Manufactures.	Repealed	24
„ c. 94. - -	Spirit Duties - - - -	Repealed	20 and 24
19 & 20 Vict. c. 34. - -	Malt Duty, &c. - - - -	Repealed	20
„ c. 80. ss. 2, 4. - -	} Income Tax, &c. - - - -	Repealed	19
20 & 21 Vict. c. 28. s. 2. - -			
21 & 22 Vict. c. 44. - -	Universities and College Estates - -	Amended	46
22 & 23 Vict. c. 18. s. 7. - -	Malt Duty - - - -	Repealed	20
23 & 24 Vict. c. 59. - -	Universities and College Estates - -	Amended	46
„ c. 113. in part - -	Malt Duty - - - -	Repealed	20
„ c. 114. - -	Malt Duty and Excise Regulations relating to Spirits.	Repealed	20 and 24
24 & 25 Vict. c. 21. s. 2. in part. - -	Spirit Duties - - - -	Repealed	24
„ c. 91. in part - -	Inland Revenue - - - -	Repealed	19, 20, and 24.
25 & 26 Vict. c. 22. in part - -	Inland Revenue - - - -	Repealed	19 and 20
„ c. 63. - -	Merchant Shipping - - - -	Amended	22
„ c. 103. - -	Union Assessment - - - -	Amended	7
26 & 27 Vict. c. 3. - -	Malt Duty - - - -	Repealed	20
„ c. 11. in part - -	Registration of Births and Deaths (Ireland).	Repealed	13
„ c. 25. - -	Savings Banks - - - -	Amended	36
„ c. 33. s. 23. - -	Inland Revenue - - - -	Repealed	19
„ c. 86. s. 4. - -	Isle of Man Harbours - - - -	Repealed	8
„ c. 87. - -	Savings Banks - - - -	Amended	36
„ c. 88. - -	Drainage and Improvement of Lands (Ireland).	Amended	27
27 & 28 Vict. c. 9. - -	Malt Duty - - - -	Repealed	20
„ c. 12. in part - -	Warehousing of British Spirits - -	Repealed	24
„ c. 39. - -	Union Assessment - - - -	Amended	7
„ c. 56. in part - -	Inland Revenue - - - -	Repealed	19 and 20
„ c. 121. - -	Railways Construction Facilities - -	Amended	31
28 & 29 Vict. c. 30. s. 5. - -	Inland Revenue - - - -	Repealed	19
„ c. 48. - -	Courts of Justice Building - - - -	Amended	29
„ c. 66. - -	Malt Duty - - - -	Repealed	20
„ c. 96. in part - -	} Spirit Duties - - - -	Repealed	24
„ c. 98. in part - -			
29 & 30 Vict. c. 23. s. 6. in part. - -	Isle of Man Customs, &c. - - - -	Repealed	8
„ c. 64. in part - -	Inland Revenue - - - -	Repealed	19, 20, and 24.
„ c. 118. - -	Industrial Schools - - - -	Amended	15
30 & 31 Vict. c. 27. - -	Spirit Duties - - - -	Repealed	24
„ c. 90. - -	Inland Revenue - - - -	Repealed	19 and 20

Table B.—Acts of former Sessions repealed and amended—*continued*.

Act repealed or amended.	Subject-matter.	How affected.	Chapter of 43 & 44 Vict.
31 & 32 Vict. c. 25. -	Industrial Schools (Ireland) -	Amended	15
„ c. 48. -	Representation of the People (Scotland).	Amended	6
„ c. 124. ss. 3-5. -	Inland Revenue - - -	Repealed	24
32 & 33 Vict. c. 14. in part -	Inland Revenue - - -	Repealed	19
„ c. 17. -	Sea Birds Preservation - - -	Repealed	35
„ c. 103. in part -	Spirit Duties - - -	Repealed	24
33 & 34 Vict. c. 4. -	Income Tax - - -	Repealed	19
„ c. 24. -	Metropolitan Board of Works—Stamp Duty.	Amended	20
„ c. 32. in part -	Inland Revenue - - -	Repealed	19 and 20
„ c. 75. -	Elementary Education - - -	Amended	23
„ c. 112. -	} Glebe Loans (Ireland) - - -	Amended	2
34 & 35 Vict. c. 100. -			
„ c. 103. in part -	Inland Revenue - - -	Repealed	19 and 24
35 & 36 Vict. c. 23. s. 20. in part.	Isle of Man Harbours - - -	Repealed	8
„ c. 65. -	Bastardy - - -	Amended	32
„ c. 78. -	Wild Birds Protection - - -	Repealed	35
36 & 37 Vict. c. 8. ss. 1, 2. -	Income Tax, &c. - - -	Repealed	19
„ c. 9. -	Bastardy - - -	Amended	32
„ c. 18. ss. 6-9. -	Inland Revenue - - -	Repealed	19
37 & 38 Vict. c. 8. s. 7. -	Isle of Man Harbours - - -	Repealed	8
„ c. 16. in part -	Inland Revenue - - -	Repealed	19, 20, & 24
„ c. 26. -	Canadian Stock—Stamp Duty - - -	Amended	20
„ c. 88. s. 17. -	Births and Deaths Registration - - -	Amended	41
38 & 39 Vict. c. 23. ss. 7, 10. -	Inland Revenue - - -	Repealed	20 and 24
„ c. 30. -	Glebe Loans (Ireland) - - -	Amended	2
„ c. 65. -	Metropolitan Board of Works (Loans) - - -	Amended	25
„ c. 77. -	Supreme Court of Judicature - - -	Amended	10
39 & 40 Vict. c. 16. s. 3. -	Spirit Duties - - -	Repealed	24
„ c. 29. -	Wild Fowl Preservation - - -	Repealed	35
„ c. 35. in part -	Spirit Duties - - -	Repealed	24
„ c. 36. s. 42. -	Customs—Malt Duty - - -	Amended	20
„ c. 59. -	Appellate Jurisdiction - - -	Amended	10
„ c. 79. -	Elementary Education - - -	Amended	23
„ c. 80. -	Merchant Shipping - - -	Amended	22 and 43
40 & 41 Vict. c. 13. -	Savings Banks - - -	Amended	36
„ c. 13. s. 11. -	Spirit Duties - - -	Repealed	24
„ c. 16. -	Removal of Wrecks - - -	Amended	22
„ c. 48. -	Universities of Oxford and Cambridge - - -	Amended	11
„ c. 59. -	Colonial Stock—Stamp Duty - - -	Amended	20
41 & 42 Vict. c. 6. -	Glebe Loans (Ireland) - - -	Amended	2
„ c. 15. in part -	Inland Revenue - - -	Repealed	19 and 24
42 & 43 Vict. c. 21. ss. 19-25. -	Inland Revenue - - -	Repealed	19
„ c. 69. -	Metropolitan Board of Works (Money) - - -	Amended	25
„ c. 77. -	Public Works Loans - - -	Amended	44
43 Vict. c. 1. -	Seeds Supply (Ireland) - - -	Amended	14
„ c. 4. -	Relief of Distress (Ireland) - - -	Amended	14
„ c. 13. in part -	Appropriation - - -	Repealed	40
43 & 44 Vict. c. 14. -	Relief of Distress (Ireland) - - -	Amended	44



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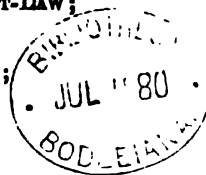
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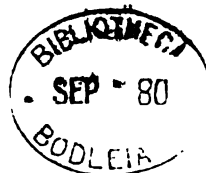
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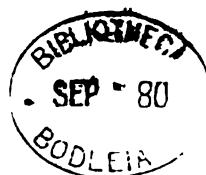
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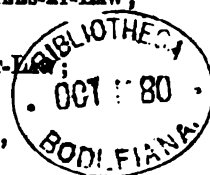
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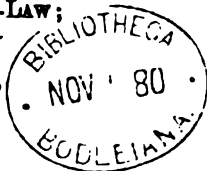
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